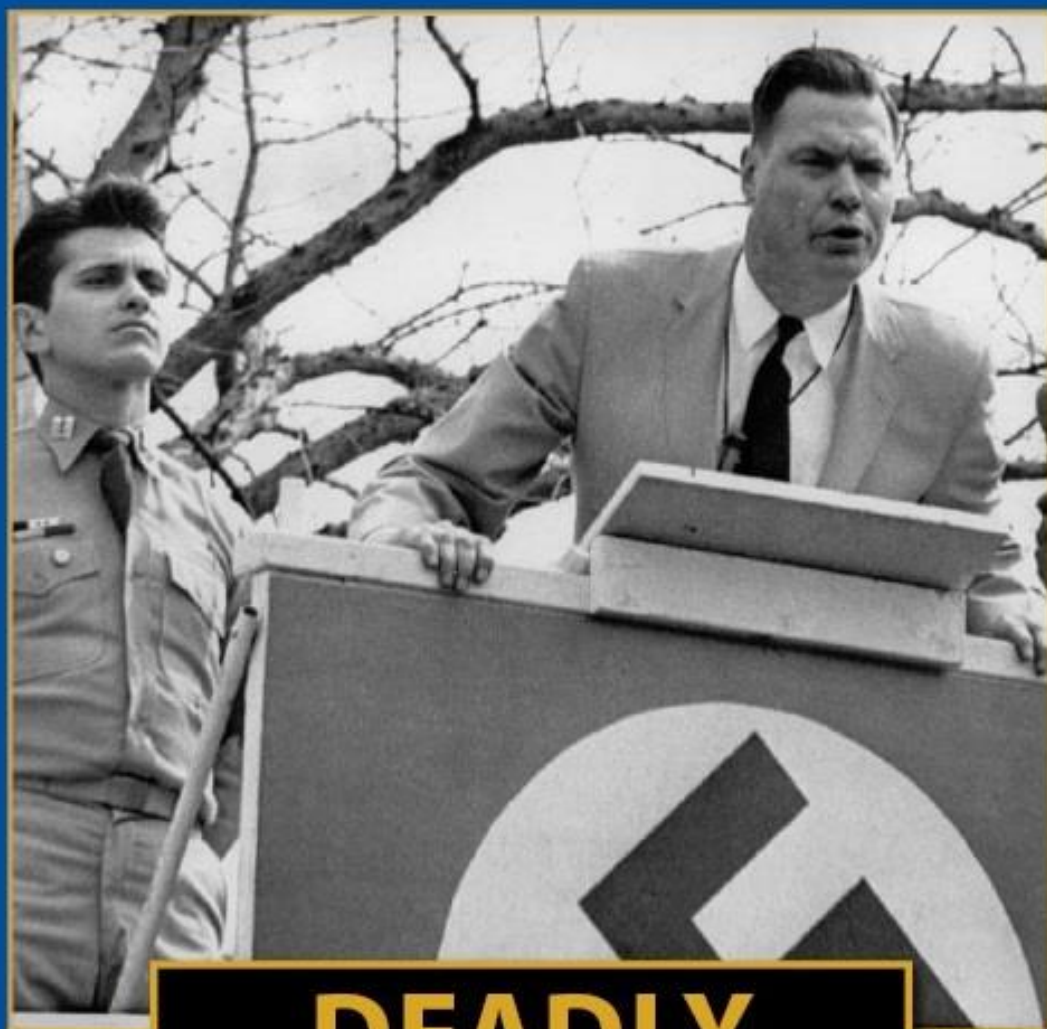




DEADLY FRIENDSHIP

John Patler and the murder
of George Lincoln Rockwell
Volume 3

James Pontolillo

Deadly Friendship:

***John Patler
and the murder of
George Lincoln Rockwell***

Volume 3

Edited by James Pontolillo

Upton Hill Publishers
Arlington, VA

Upton Hill Publishers
6150 Wilson Boulevard
Arlington, Virginia 22205

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Designed and typeset in Times New Roman.

Cover photo: American Nazi Party Commander George Lincoln Rockwell, with his aide-de-camp John C. Patler, speaks at a March 26, 1966 rally in Washington, DC.

Dedicated to the blessed memory of
my dear wife Julia Jo,
whose feet now tread the lost aeons.

*I knew that I would not live to see the victory
which I would make possible. But I would not die
until I had made that victory certain.*

George Lincoln Rockwell

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Patler v. Commonwealth of Virginia,
Volume 4

IV
Record No. 7103

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN PATLER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Mathias Koehl

A. It may have been. I'm not too familiar with the exact circumstances of the dishonorable charge.

Q. All right.

Now the other part, about a liar then. Patler sent Rockwell about nine copies of an identical memorandum that he wanted Rockwell to sign which merely said that Rockwell admitted he's wrong and John Patler a good guy and Rockwell wouldn't sign it?

A. That's right.

Q. Now, in all of these correspondence that page 2062 } you managed to dig up there wasn't a single threat in any of it at all, was there.

A. I don't know of anything in writing. I didn't have an opportunity to go through almost all of it.

Q. And most of it was petty squabbles between Patler and his commander about money, about how things should be run and so forth?

Mr. Hassan: I'm going to object, Your Honor. He objected to the real things going into evidence and now he's trying to put them in in his own paraphrased fashion which are misrepresenting and misleading and I object to him summarizing documents he objected to being introduced.

The Court: Well, I think the objection is well taken. They were kept out of evidence upon the objection of the defendant. If the defendant wants the Jury to see them, then they ought to be admitted so they can see them in their entirety.

I will state that the defendant has a problem. I will state that I read them and perceived no threats in them and if I had perceived threats in them, I would have had them admitted into evidence.

Mr. Hassan: They weren't offered for threats.

The Court: I understand that.

page 2063 } Mr. Hassan: Right. I would like for the Jury to get it and I still think we have the law to support it.

The Court: The Commonwealth offered them to show the relationship of the parties and the Court excluded it because of the unnecessary details.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Now, you had your own petty squabbles with Rockwell, too, the same as Patler, didn't you?

Mathias Koehl

A. I wouldn't call them squabbles. I call them areas of disagreement. I think there's a considerable difference between having a vehement violent type of argument and having a difference of opinion.

Q. And you had differences of opinion regarding organizational problems?

A. I discussed various aspects of the organization from time to time.

Q. About money?

A. I discussed matters involving finances, yes.

Q. And you even told him you were tired of playing games?

A. I may have used that language at one time, yes sir.

Q. And he accused you of fouling up every-
page 2064 } thing, communications foul up.

The Court: Mr. Harrigan, you'll have to put these in the form of questions.

By Mr. Harrigan:

Q. Did he?

A. I don't recall.

Q. Let me show you a letter of the 13th of April, 1967.

Can you identify that?

A. I'm not sure I've ever seen this.

Mr. Hassan: Before you do any more answering, I'm entitled to see it also. Wait until I've had a chance to read it.

Mr. Harrigan: Would you mark that?

By Mr. Harrigan:

Q. Do you recognize it?

A. No, I don't.

Q. Is that Rockwell stationery?

A. It sure looks like it.

Q. Is that Rockwell's initials on it?

A. It appears to be.

Q. Who's it addressed to?

A. Addressed to me.

Q. Do you recognize ever having received
page 2065 } that?

A. No I don't.

Mathias Koehl

Mr. Harrigan: I'd like to introduce this into evidence, Your Honor.

Mr. Hassan: I'd like to have it marked for identification, first.

Mr. Harrigan: I thought it was.

(Whereupon, Defendant's Exhibit J was marked for identification.)

By Mr. Harrigan:

Q. Now, I show you another memorandum.

The Court: I have not dealt with this one yet.

Is there objection, Mr. Hassan?

Mr. Hassan: I object.

The Court: The objection is sustained. It has not been identified.

Mr. Harrigan: He has identified Rockwell's signature on it and the paper and the address was to him.

The Court: Well, he hasn't said he ever saw it before.

Mr. Harrigan: Then I'll have to produce the answer he made to it then.

Mr. Hassan: I didn't hear what you said, Mr. Harrigan.

Mr. Harrigan: I'll produce the answer he page 2066 } made.

By Mr. Harrigan:

Q. I show you Defendant's Exhibit I.

Did you ever see that?

A. Yes I did.

Q. You wrote that?

A. Yes I did.

Mr. Hassan: No objection.

By Mr. Harrigan:

Q. Now, I show you Defendant's Exhibit K and this is the answer to that.

Mr. Hassan: If Your Honor please, I hate to have to keep doing this but Mr. Harrigan thinks he's here alone. He has yet to show me one document.

Mr. Harrigan: I'm just going to see if he can identify it.

Mathias Koehl

Mr. Hassan: I think once you have it marked, I'm entitled to see it before you put it up there.

The Court: I think that's right, Mr. Harrigan.

Now, I take it there was no objection to I, Defendant's I which is a memorandum from—

Mr. Hassan: (Interposing) Something he wrote himself.

I have no objection.

page 2067 } The Court: (Continuing) From Mr. Koehl to Mr. Rockwell.

All right. That will be admitted as Defendant's I.

(Whereupon, Defendant's Exhibit I was entered into evidence.)

The Court: Mr. Harrigan, do you want the Jury to see this at this time.

Mr. Harrigan: I would just as soon let them read it but it will take less time if he reads it.

Mr. Hassan: What was that?

Mr. Harrigan: Let him read it himself. It's admitted Mr. Koehl—

The Witness: This is a memorandum from—

Mr. Hassan: (Interposing) I can't read this one and listen to testimony and I didn't do this to him and I don't want any testimony while I'm trying to read this. I have a one track mind, you know.

The Court: We'll wait.

Let us know when you're on the track.

Mr. Harrigan, do you have J for identification?

Mr. Hassan: J is the letter I have objected to.

The Court: That's right.

page 2068 } Mr. Hassan: And I think he took it back over here to the table.

By Mr. Harrigan:

Q. Mr. Koehl, would you read that?

A. This is a memorandum. I believe it's Exhibit I. It's addressed to Commander Rockwell from myself. It was written on the 29th of July, 1967 and the subject of this: "Administrative Reorganization" and it reads as follows:

"I find it impossible to continue doing effective work under the present organizational set up of the party. Right now I

Mathias Koehl

feel about as useful as a typewriter with the keys all jammed up.

If I am expected to carry out even half of my responsibilities there are going to have to be some drastic changes."

And these are listed:

"No. 1. I'm going to have to get some serious qualified help. At the moment I have no one. I absolutely need one other person who is willing to put in a ten to twelve hour day regularly. I could use two such persons.

page 2069 } No. 2. I want to put such person or persons on regular salaries so I have some tangible control over their performance.

No. 3 I'm going to have to be allowed to separate the administrative work of the Party from the Storm Trooper Organization. As long as the two are lumped together, it's impossible to achieve anything in either area.

No. 4. We're going to need an office physically separate from the barracks at the earliest possible date. It's impossible to try to carry out administrative organization in a troopers barracks.

No. 5. I'm going to have to have a reasonable budget to enable sufficient purchase of supplies and equipment necessary to carry out the functions to which I have been assigned. I would expect such funds to come out of those dues and other fees I'm strictly responsible for raising. It's impossible for me to continue begging for such necessities as
page 2070 } bond paper, postage, typewriter ribbons and file cabinets."

That's the end of the series, serial numbers, and it continues:

"These are bare minimum conditions for me to keep operating. Otherwise, I'm just wasting your time and mine and not really helping the cause. Workwise I'm not even able to keep my head above water any more and I am actually going backwards.

I can't continue like that. I am tired of amateur games."

That's the end of the memo.

By Mr. Harrigan:

Q. Now, Mr. Koehl, in your direct testimony you mentioned a prior attempt on Rockwell's life and I believe it was on June 27, 1967, is that correct?

Mathias Koehl

A. Whatever the date was, yes sir.

Q. And were you at the barracks that day?

A. Yes I was.

Q. Now, how many assailants were involved in that alleged attempt?

Mr. Hassan: If he knows.

page 2071 } The Witness: I only know from second hand knowledge. In other words from hearsay. I was told it was two individuals, both by the Commander and the others.

By Mr. Harrigan:

Q. And was some sort of firearm used in that attempt?

A. Yes sir.

Q. And did it hit the car, a bullet?

A. Yes it did. It ricocheted off the top of the car.

Q. How many shots were fired on that occasion?

A. I don't believe there was but one.

Q. At what point was the car when this particular shot was fired?

A. Well, as it was described to me the car was pulling into the driveway and there was an obstruction. There's a slight incline as you enter the driveway off of Wilson Boulevard and as the driveway levels off for a few yards in there was an obstruction place consisting of a grocery cart, I believe, it was a mail box top or something. In other words, the car had to come to a half and—you want to know now where the bullet was fired from?

Q. Well?

A. I'm only giving you information that came second hand to me.

page 2073 } Q. From the road to up the driveway up to the house, how far is it?

A. I couldn't put it exactly in feet. I guess—I've already mentioned it's about a good city block, a long one.

Q. That's from the road up the driveway up to the house, we're referring to?

A. Right.

Q. Now, is it heavily wooded on both sides of the driveway?

A. Yes it is. At least up until about a half or three-fifths

Mathias Koehl

of the way towards the house, then there is a cleared out area as the house is approached.

Q. How many other attempts have been made on Rockwell's life?

A. I think that was the closest.

Q. Well, I didn't ask you whether that was the closest. I said, how many others? Didn't he say there was eighteen?

A. I don't know. I don't have any knowledge of any exact number. I know there were numerous threats and two attempts. How far any of these actually came to execution, I don't know.

Q. All right.

Now, was it a common occurrence to receive
page 2074 } threats to kill Rockwell?

A. We received threats on numerous occasions over the years.

Q. All right.

And numerous, would that be more than fifty?

A. Within what period?

Q. Over the course of the years?

A. I would say so.

Q. It would be more than a hundred?

A. Very likely. I would say so.

Q. And do you still receive threats on your life now since you're the leader?

A. I believe there have been some vague ones. What we normally do in the case of the more overt ones, well, whenever we receive a more overt threat, we turn them over to the F.B.I. and there have been a few. I believe there may have been some directed personally.

Q. Now, was Patler on fairly friendly terms when he left the organization, with Rockwell?

A. At the time he was leaving I would say no.

Q. And, well, isn't it a fact that Rockwell attempted to get him back in the organization?

A. When was this?

page 2075 } Q. Well, I'm asking you.

A. He did in 1963.

Q. I'm talking about 1967. Did he ever send anybody to talk to him?

A. He made one indirect attempt to have somebody contact him. We needed help on some of our publications and I believe he was trying to see whether there was any possibility at all of salvaging Mr. Patler for Party work in some capacity.

Mathias Koehl

Q. What are you saying? Are you saying he made some sort of an attempt to get him back?

A. He was very much interested in seeing if there was a possibility there.

Q. All right.

Now, do you say—did he make one attempt or did he make more than one to get him back within the Party?

A. There's only one that I know of.

Q. And who made that attempt, do you know?

A. I believe it was Vinejevich.

Q. Now, you made a comment that Patler was stirring up some sort of dissension between the lighter and the darker members of the Party and he was calling the light people blue eye devils.

A. That was common knowledge around the page 2076 } Party.

Q. Patler's wife and children are all blue eyed, aren't they?

A. I don't believe I've seen them all.

Q. Those you've seen, aren't they blue eyed?

A. I've seen pictures. I can't recollect if that's—it's possible.

Q. Wasn't that phrase coined by Elijah Mohammad?

A. The Black Moslems have used it, yes.

Q. They copied the phrase?

A. As far as I know, they did. They're the originators.

Q. Now, you and Mr. Patler had some disagreements also didn't you?

A. That's correct.

Q. (Continuing) Is that right?

A. That's right.

Q. And more than those disagreements was a disagreement of just how the Party should be run wasn't it, as to what—

A. In what respect?

Q. Didn't he want to Americanize the Party and do away with the Seig Heil and Heil Hitler and all the Nazi Stuff?

A. Yes he did.

Q. And you did not wish to do away with that?

A. That's not actually true. We had considerable page 2077 } discussions of it and there were modifications made on the 1st of January of this year.

Q. And what modification was that?

Mathias Kochl

A. Well, for example, the Seig Heil was dropped in favor of White Power. The Heil Hitler was reserved for formal occasions within the Party.

Q. And you changed the name of the Party to what?

A. The National Socialist White Peoples Party.

Q. And who coined it?

A. I first saw it in a memorandum, I believe, that Mr. Patler had written.

Q. Patler wanted to do away with the American Nazi Party didn't he?

A. Yes, as I recall, he did.

Q. He thought it had an aura to it?

A. That's correct.

Q. And did you disagree with him slightly on those principles?

A. I don't think so. I had a few modifications I thought ought to be taken into consideration but no basic disagreement.

Q. Wasn't your theory that you shouldn't Americanize it, that you should parallel it as close to the page 2078 } German Nazi Party as possible.

A. As I recall, there was no dispute. At the time, I went along with all the proposals that were raised for using the term White Power as well as the name change. One thing I did want, I wanted time to think about the change. It was rather far reaching.

Q. Did Patler want to play down Hitler and the swastika and all the foreign aspects?

A. He indicated such in his memorandum.

Q. Now, the last place that Patler worked was down in Spotsylvania?

A. For all practical purposes, yes, he was transferred up to the barracks in Arlington but I don't believe he did any significant work while there for the five days or weeks that he was transferred there.

Q. And while he was down there, he was spending considerable time with his family and away from his Spotsylvania duties?

Mr. Hassan: Your Honor, that's where we came in this morning.

Mr. Harrigan: This leads to another point, Your Honor.

The Court: Over ruled.

Mathias Koehl

page 2079 } By Mr. Harrigan:

Q. Isn't that right?

A. Would you repeat that?

Q. He was spending more and more time with his family and less with the printing press?

Mr. Hassan: I object, Your Honor. He said he spent his time away but didn't know what he was doing.

The Court: That's true. He testified he didn't know exactly where he was.

By Mr. Harrigan:

Q. Didn't Mr. Rockwell go down to Spotsylvania and break into John's room that he had down there and take all of his equipment, everything John had and bring it back up to the barracks?

A. Yes he did.

Q. All right.

And in addition, did he take—

The Court: (Interposing) What is your question, Mr. Harrigan? Did Rockwell personally do this?

Mr. Harrigan: Personally Rockwell did that, isn't that right?

The Witness: I'm reasonably sure it was Commander Rockwell personally.

page 2080 } Mr. Harrigan: That's right.

By Mr. Harrigan:

Q. And John had his own private room down there, didn't he?

A. He was assigned to a private room, that's right.

Q. So this—and he lived there with his wife part of the time, didn't he?

A. I have no knowledge of that.

Q. I see.

Now, when Rockwell took all of Patler's gear out of the room, where did he bring it to?

A. He brought it up to Arlington, I believe.

Q. To the Arlington barracks?

A. That's correct.

Q. And do you know what became of much of that stuff that was taken out of the room?

Mathias Koehl

A. Do you mean his personal effects or party material that he was working with?

Q. His personal effects and party materials?

A. Well, presumably he took all or most of it at the time he was discharged. He was given an opportunity to retrieve anything that belonged to him.

Q. You say presumably. I say, do you know?
page 2081 }

A. I can't say with certainty whether he got every single item. He refused to sign a statement that he got everything.

Q. And you offered him a statement?

A. Right.

Q. And he refused to sign it?

A. I mean we gave him an opportunity to get his gear together and make any listings. He was given ample opportunity to claim everything that belonged to him.

Q. Now, you have testified that that Nazi Party did make up or have available a listing on guns that were available at the Party, is that right?

A. Yes sir.

Q. Now, how closely was that list checked with the guns?

A. Well, when it was done, it was done rather fairly but this was somewhat infrequent. I didn't personally get into that.

Q. Now, did you have many guns down there that never appeared on any list?

A. Our regulations for all weapons personally and Party property was that they be registered with the Arlington County Police.

Q. That's the regulation but the question was, did you have guns down there from time to time that never appeared on any list?
page 2082 }

A. There may have been one instance of a cap and ball pistol. After that, I was told Patler had swiped—

Q. (Interposing) Mr. Lloyd told you that, didn't he?

A. What was that?

Q. Mr. Lloyd told you that?

A. Well, he was one of the two individuals staying in the room next to mine at the time it was taken and there were only two persons with access to the room and one was Mr. Patler.

Q. Do you know who that belonged to, that cap and ball pistol?

Mathias Koehl

A. I believe it was Mr. David Hughes.

Q. Have you contacted Mr. Hughes at all and asked if he gave that gun to Patler or not?

A. No, I haven't.

Q. Would you recognize Mr. Hughes' handwriting?

A. I think I would.

Mr. Morris: Your Honor, would you indulge us a moment please.

The Court: This is a good time to call a luncheon recess.

page 2083 } (Whereupon, at 12:37 p.m., the hearing was
recessed, to reconvene at 2.00 p.m.)

AFTERNOON SESSION

(2:00 p.m.)

The Court: Call the Jury.

Whereupon, MATHIAS KOEHL, resumed the stand, having been previously sworn, was further examined and testified as follows:

CROSS EXAMINATION (resumed)

The Court: All right, Mr. Harrigan.

Mr. Harrigan: All right.

Mr. Hassan: There he goes again, Your Honor, showing him things.

Mr. Harrigan: I can show him first—

Mr. Hassan: He hasn't showed it to me yet.

As soon as it's marked up, you are supposed to go and show it to opposing counsel you know, Mr. Harrigan.

By Mr. Harrigan:

Q. When did Mr. Hughes leave the Party?

A. It was December of last year.

Q. All right.

Now, I show you this letter and the envelope.
page 2084 } Will you tell me if you can recognize that signature of Mr. Hughes?

A. It looks like his handwriting.

Mathias Koehl

Mr. Harrigan: I'd like to have this in evidence, Your Honor.

The Court: Is there objection?

Mr. Hassan: I object.

The Court: Do you want to cross examine about it?

Mr. Hassan: It's not a letter directed in any part of this litigation and not for this witness or anyone—

The Court: (Interposing) Have you seen this before?

The Witness: I have not.

The Court: The objection is sustained.

Mr. Harrigan: Exception, Your Honor.

He recognized the handwriting as Mr. Hughes.

The Court: Even so, it's pure hearsay. It's a statement by Mr. Hughes as far as I know.

Mr. Harrigan: He volunteered a statement that that gun was stolen.

Mr. Hassan: He didn't volunteer it. He was questioned and said that he was told.

Mr. Harrigan: That's right.

It's merely since he identified the handwriting and that's the man that owned the gun so we merely want to
page 2085 } introduce that to rebut that hearsay declaration
and since he's identified the handwriting and for
that purpose alone, it shows merely an inconsistent position
taken by Mr. Hughes that he gave Mr. Patler the gun.

The Court: Mr. Hughes would have to testify to that himself. This is an unsworn statement from a witness who isn't here and is offered to show the truth of the matter contained therein so the objection is sustained.

Mr. Harrigan: Exception.

By Mr. Harrigan:

Q. Now, Mr. Niales, from approximately—

The Court: (Interposing) Mr. Koehl isn't it?

Mr. Harrigan: Koehl excuse me.

By Mr. Harrigan:

Q. From 1964 up until August 25 or prior to August 25, approximately how many members did you have that went in and stayed a little while and resigned or left?

A. Here in Arlington?

Q. Yes.

A. I would estimate between about thirty and fifty.

Mathias Koehl

Q. Now, out of that thirty or fifty, how many of them left under unpleasant circumstances?

A. How do you mean?

page 2086 } Q. Well, they were thrown out or forced to resign or what?

A. There were only a fraction of those who were actually discharged. Most of them left of their own free will.

Q. Now did you have quite a few members with known records that were in and out of your organization?

A. We did have a number, yes sir.

Q. Now, did you ever have people infiltrate your organization for the purpose of securing information to be used against you?

A. I don't recall any case within the last three years.

Q. Well, a newspaperman infiltrated your organization for the sole purpose of writing articles—

Mr. Hassan: When?

The Witness: I believe that was—and this I only know from second hand sources—this was 1960, 1959.

By Mr. Harrigan:

Q. Do you know Mr. Gobles?

A. I knew him briefly about four years ago.

Q. Wasn't Mr. Gobles passing information to the ADL on your organization?

A. I don't know of him but briefly. It's possible. He was only with the organization for a matter of a
page 2087 } week, as I recall it.

Q. Did Rockwell ever get an Arrest Warrant against any of the former members, a Mr. Hughes. Did he ever get an Arrest Warrant for Mr. Hughes?

A. I believe he did.

Q. Now, how long does it take to get from Doug Niales house to the shopping center, driving?

A. About ten or twelve minutes.

Q. Have you received any information of a conspiracy to kill Rockwell that occurred within several months prior to his assassination?

Mr. Hassan: That would be pure hearsay.

The Court: I'll let him answer whether he did or did not receive any information.

Mathias Koehl

The Witness: Nothing concrete. We were apprehensive after the first assassination attempt.

By Mr. Harrigan:

Q. Did you have any information concerning a conspiracy or there was written a conspiracy wherein \$10,000 was mentioned?

A. No concrete information.

Q. I asked if you had information, not concrete information?

A. No information of any kind.

page 2088 } Mr. Harrigan: That's all.

The Court: Any redirect, Mr. Hassan?

Mr. Hassan: Yes there is, Your Honor.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Did you say you had the original of Bruce's discharge?

A. Yes I do, sir.

Q. What does Bruce have—

A. Excuse me. I believe I've been in error.

You should have the original and I have the duplicate as distinguished from the photostatic copy that was presented here earlier this morning.

Q. Then this photostatic copy doesn't come from you, does it?

A. No sir.

Q. And did you personally give that discharge to Bruce?

A. I mailed it to him.

Q. You mailed it to him?

A. That's correct.

Q. Now, I would like to show you Defendant's Exhibit G and ask you sir with regard to that, was that \$10.00 ever paid?

A. I don't believe so. If you would like, perhaps I could check my records.

page 2089 } Q. No. I've got some more questions.

I usually know the answers when I ask them.

Was that resignation ever accepted?

A. Yes it was.

Q. Was there ever a discharge or dismissal entered on Douglas Niales?

Mathias Koehl

A. No sir.

Q. Now, I ask you who provided Mr. Niales with the envelope in which that was mailed?

A. That's a Party business return envelope.

Q. Who was it directed to?

A. It's directed to myself.

Q. And I ask you to turn that over, sir, and tell me whose handwriting is on the back of that?

A. I think it's Mrs. Niales, I'm not sure.

Q. Both her resignation, Exhibit H; and Exhibit G, came in the same envelope?

A. They might have.

Q. Do you know whether it did or not?

A. I'm not sure.

Q. Now, does that card regarding the \$10.00 donation upon acceptance of resignation come in the envelope?

A. I believe so.

page 2090 { Q. Now, was there any animosity connected with that resignation?

A. Yes sir.

Q. What was the animosity?

A. The animosity—do you want me to recite from this?

Q. No. I want you to explain how somebody would send in a resignation and were supposed to donate \$10.00 and given a prestamped envelope to mail it in if there was animosity?

A. I think it was against the leadership of the Party.

Q. Why would he give you \$10.00?

Mr. Harrigan: I object.

The Court: I'll let him answer if he has knowledge.

The Witness: I have no knowledge.

By Mr. Hassan:

Q. Why did you provide him with the envelope?

A. I don't know that we provided this to them at that time specifically for that purpose.

Q. What does that notation on the back of the envelope say?

A. "Thank you for the stamped envelope"

Q. You didn't provide it?

A. I can't recall specifically for this.

Q. But there's no question it was addressed to

Mathias Koehl

page 2091 } you. It was a prestamped envelope provided to you and it was provided?

A. That's right.

Q. Now you stated that after Rockwell left to do his laundry, you had gone to your room to work but in the meantime you had come downstairs before you got the calls from the newspapers. How long were you up there before you came down?

A. I believe it was about five or ten minutes.

Q. What did you come down for?

A. Well, I was getting a little impatient that Commander Rockwell had not returned.

Q. Who did you see when you came down?

A. The three individuals named earlier, Mr. Parsons, and Mr. Parker, and Bruce.

Q. And how long did you stay downstairs?

A. Must have been five or ten minutes.

Q. Did you go back upstairs then?

A. Yes I did.

Q. And how long were you upstairs before the first phone call from the news media came in?

A. I think it was just a few minutes.

Q. Then for the first five minutes that Lincoln Rockwell was gone, you don't know what happened down—
page 2092 } stairs but for the next ten or fifteen minutes—

Mr. Harrigan: (Interposing) I object to Mr. Hassan summarizing and putting words in everybody's mouth.

The Court: The objection is sustained. He's a prosecution witness.

Mr. Hassan: This was a matter brought out on cross examination.

The Court: I don't think you can use cross examination that way.

Mr. Hassan: On redirect?

By Mr. Hassan:

Q. Now, I would like to show you Commonwealth's Exhibit No. 65 for identification which Mr. Harrigan has shown to you and says it merely says Patler's a good guy but Rockwell wouldn't sign it. Is that what it says?

A. No sir.

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Q. It doesn't say anything about Patler being a good guy, does it?

A. No sir.

Q. In fact it refers to those two items out of the nine that Mr. Harrigan talked to you about, liar and dishonorable, doesn't it?

A. Yes sir.

page 2093 } Q. Now, Mr. Harrigan asked you about the attempt in June for a reconciliation with Patler and you said Mr. Vincjevich went to do this. Did he have any success?

A. No sir. He did not.

Q. Did you hear of what success he did have or lack of success he had?

A. He made a report.

Mr. Harrigan: Objection.

The Witness: Well—

Mr. Harrigan: I have an objection.

The Court: Don't tell us what was in the report.

By Mr. Hassan:

Q. To whom was the report sent?

A. It was the Party officers assembled at that time for a meeting.

Q. Without stating the contents, does he quote Patler in that report?

A. He does.

Q. Now, you told Mr. Harrigan that some thirty to fifty people had been in and out of the organization from 1964 to 1967.

How many of those that went out organized a competitive organization after they left?

page 2094 } A. Very few. Very few.

Q. Now, after April of 1967, did Mr. Patler organize a competitive organization?

A. Yes sir, he did.

Q. What was the name of that organization?

A. It was a group called the White Power Committee.

Q. And was he the head of that group?

A. Yes sir.

Q. Now, Mr. Harrigan asked you if an Arrest Warrant had been obtained for Hughes but he didn't ask what the Warrant

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was obtained for. Can you tell us what the Warrant was obtained for?

A. After Mr. Hughes had departed rather suddenly in December we discovered evidence of theft and larceny. I believe it was on both charges that the Warrant was issued.

Q. You mean he took off with your funds, don't you?

A. Yes sir.

Q. Was he ever apprehended and brought back?

A. No sir, he was not.

Mr. Hassan: I have no further questions, Your Honor.
Commonwealth rests.

The Court: I'll let you have a recross but only
page 2095 } on the narrow issues that were new on redirect
examination.

Mr. Harrigan: That's all I want.

RECROSS EXAMINATION

By Mr. Harrigan:

Q. Mr. Hassan on redirect and direct asked you concerning Robert Bruce, when Robert Bruce was discharged, dishonorably discharged.

Where did he go?

A. He went to reside with the Niales'.

Q. With the who? The Niales?

A. That's correct, sir.

Q. Now, with regard to this charge against Hughes. Isn't it a fact that Hughes' father was a Judge in Canada—

Mr. Hassan: (Interposing) I think this is new matter, Your Honor.

Mr. Harrigan: It's not new.

Mr. Hassan: Any questions that are not within the scope of the redirect examination—he's not the son of a Judge in Canada, it's the son of a Judge in Michigan.

By Mr. Harrigan:

Q. Didn't Rockwell go to Hughes' father and demand \$10,000 or he was going to expose his son?

A. Commander Rockwell did have occasion to
page 2096 } speak to Hughes' father. I believe it was only
over the phone. Just, I'm sure, he made an at-

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tempt to recover any money that may have been taken or its equivalent and exactly what he said, I don't know.

Q. You don't know?

A. I mean, how he phrased it. The purpose of his call would have been to make some attempt to recover it.

Q. It was a blackmail attempt, wasn't it?

A. You said that.

Q. Do you deny it?

A. I have no knowledge of any blackmail attempt being made by Commander Rockwell.

Mr. Harrigan: That's all.

The Court: All right, sir, you're excused. Thank you.

You may take the rest of your material with you, Mr. Koehl.

Ladies and gentlemen of the Jury, at this time the Court will have to consider some matters out of the presence of the Jury so we will excuse the Jury.

All right, gentlemen.

Mr. Harrigan: Ready Your Honor?

The first thing we would like to do, Your Honor, there is certain evidence we move to strike. The first page 2097 } piece of evidence we move to strike would be the hat that's been testified about, which is Commonwealth's Exhibit No.—

Mr. Hassan: I'm going to object to wasting time. It hasn't been introduced in evidence.

Mr. Harrigan: (Continuing) Strike the evidence and the testimony of 42.

Mr. Hassan: You can't strike the testimony as to finding it.

Mr. Harrigan: (Continuing) The coat. I don't think it has been admitted into evidence as yet. There was Motion made to admit it into evidence which the Court took under advisement.

We move to strike the coat and all the testimony relating to the coat from evidence in this case and that testimony includes the testimony of Mr. Vincjevich, the other two witnesses that testified about it and we'd like to take those items first.

The Court: Well, I suppose you would like to have me move on the Motion under advisement to admit the coat into evidence.

Mr. Harrigan: Yes Your Honor.

The Court: I have found relatively little authority on it but what I found would appear to justify the

page 2098 } admission into evidence of an article which is shown by some witness to have been reasonably like one which was owned, used or worn by the defendant. The authority for that is in Underhill's Criminal Evidence, Fifth Edition, Volume 1, Section 115 in the 1967 pocket supplement.

It begins by speaking of weapons and says positive identification of a weapon is generally not required, it being sufficient as witnesses identify it as appearing to be the one used by the defendant. The same thing is true of other exhibits.

It goes on to speak of the chain of custody requirement, where exhibits have been kept in police custody, the chain of possession must reasonably be adequate and there is no requirement that all persons who have access to them be called to testify. Whether an exhibit not in the same condition it was at the time of the crime it may be admissible if the differences are described. In fact the cases are cited for the proposition that an exhibit may be admitted into evidence which illustrates the thing used.

Accordingly, the coat will be admitted.

Mr. Hassan: How about the towel which is in the same category, having been offered three times.

page 2099 } The Court: Well, I have thought about that. I have two difficulties with it. One is the fact that there is a hiatus in the chain of custody to it but perhaps that's explained by the fact when the defendant was arrested by the—

Mr. Hassan: (Interposing) In a police car and police control.

The Court: Then they sent another policeman, I've forgotten who.

Mr. Hassan: Correct.

The Court: And gave it to Davis who then marked it.

The further difficulty of that is that nobody reported seeing a towel on the man seen fleeing from the scene. So unlike the coat there was testimony that the man fleeing the scene was wearing some kind of dark coat by some of these identifying witnesses.

The towel was merely found on the defendant as he was walking down Washington Boulevard but it's not associated with that earlier figure seen fleeing the crime.

Therefore, it seems to have no probative value to connect the defendant with that fleeing—

Mr. Hassan: (Interposing) One thing about it is he was seen wiping his face with it when seen by Inspector Cole.

The Court: But it does not—

Mr. Hassan: (Interposing) And that ex-
page 2100 { plains why Inspector Cole didn't know what he
saw because he didn't see his face. He was wiping his face with the towel.

The Court: He testified to that.

Mr. Hassan: You're not going to strike that testimony about the towel?

The Court: No, I wouldn't strike that testimony but I don't see any reason to have the towel—

M. Hassan: (Interposing) If the testimony is in, I don't care about the towel.

The Court: (Continuing) Because he was moping his face with a towel—would you give me the coat and I'll mark it now. I've forgotten what exhibit number it is.

Mr. Hassan: 43.

The Court: All right.

(Whereupon, Commonwealth's Exhibit No. 43 was entered into evidence.)

The Court: Mr. Harrigan, go ahead.

Mr. Harrigan: Now, there's another matter. There's a stocking in the coat. I suppose it's still in there and that nobody identified as anything and nobody identified how it got there and it hasn't been offered in evidence so I
page 2101 { would move to strike that stocking from evidence and make a move to strike any testimony regarding the stocking.

The Court: Well, it isn't offered in evidence so I can't very well strike it out.

Now, if the testimony concerning the stocking is hanging in mid-air, it's probative of no particular fact. It's rather like the testimony that Mr. Hassan produced from various F.B.I. experts which he considered he was under the duty to produce although it did not bring in any criminal finding. It is your thought that should also be stricken?

Mr. Harrigan: I think that the F.B.I. testimony is definitely exculpatory and goes right to the coat and Patler's clothing and, if anything at all, it shows that he was not the man on the roof and creates—I'm going to argue that.

The Court: Isn't the stocking in the same category? There's nothing to connect it with the case.

Mr. Hassan: Now, the only evidence in this one is that there was no hair found in it, neither Patler's or anyone else's.

Mr. Harrigan: That's not the case with the stocking.

Mr. Hassan: Well, that's the only knowledge we have of it is that the F.B.I. found it there in the coat.

Mr. Harrigan: It was found at F.B.I. Headquarters page 2102 } quarters, for some reason or another. It has no connection with the coat other than being found in the pocket at that location. There's no connection with a fleeing man or connection with anything.

The Court: It's true. The stocking is not in evidence. You just have the remark of the F.B.I. man that it was found in the coat.

Mr. Harrigan: Then it ought to be taken out of the coat pocket.

Mr. Hassan: No sir. That's where it was when it was found and that's where it belongs.

The Court: I think that if you're not going to move the F.B.I. testimony not be stricken, then it should remain.

Mr. Harrigan: It hasn't been offered. The stocking has not been offered.

Mr. Hassan: The coat was offered as it was found.

The Court: I understand you're not talking about striking the testimony, striking out the oral testimony concerning the finding of the coat.

Mr. Harrigan: No. I'm talking about striking the stocking and not letting the stocking go to the Jury. It hasn't been offered and it's not in evidence and since it's not in evidence it shouldn't go to the Jury.

page 2103 } The oral testimony I don't care about. That didn't hurt us a bit.

The Court: All right. Let the stocking be removed because there's no connection.

Mr. Hassan: I want an explanation to the Jury that it was in evidence when produced in the coat with the coat and found in the coat. There was some stains on that coat. If there was anything else on it, that would be in evidence. If there were hairs, that would be in evidence. The stocking is there just like a hair would be there and it's in evidence with the coat.

Mr. Harrigan: That's like bringing the paper bag in and saying later on that I was trying to trick you—

Mr. Hassan: (Interposing) The only tricking I've seen was the switching of some fragments of bullets.

Mr. Harrigan: I think the record discloses it hasn't been offered and I object to anything going to the Jury that hasn't been offered in evidence and I except.

The Court: Lieutenant Kadel testified that he looked

through two pockets. Presumably he admits he didn't look in all four pockets. The first man who said that he looked in all four pockets was the F.B.I. man who said he found the stocking. Therefore, there's reasonable ground page 2104 } to believe it was in the coat when found so I'll not strike the testimony. The stocking isn't a separate item so we'll leave it in the coat where it is. I think it's perfectly harmless.

Mr. Harrigan: Note my exception to allowing evidence going to the Jury that wasn't identified by anyone. It wasn't offered in evidence and never has been offered in evidence except by hiding it in a coat pocket.

Mr. Hassan: Nobody's hiding anything in the coat pocket. It was found there. Whether hid there or not, nobody knows and there's been no testimony about it. It's all part of the exhibit offered by the Commonwealth and examined by the F.B.I. and found by the F.B.I.

The Court: The ruling is based on the fact that the chain of custody to the coat has been established for it with enough completeness to indicate no one could insert the stocking until it ultimately got to the man who found it in the pocket. Therefore, the inference can be drawn that it was there when found. I think it's probative of nothing at all but since the coat is admitted, it probably would be improper not to let that go with it.

Mr. Harrigan: Exception.

Mr. Hassan: I would like to take exception to "probative of nothing at all" because I don't know what page 2105 } probative of nothing at all means after reading the Giles case.

Mr. Harrigan: Now, we would move to strike the bullets and shells found at the farm, since there has been no connection between these particular bullets and shells with the defendant himself.

The only testimony was they went down and chopped in a tree and they found bullets and shells on the farm and that there was some other testimony to the effect that sometime prior to that Patler was down there and he had been target practicing and they don't know whether it was a shotgun, a pistol or not and certainly you cannot, from the mere fact of finding it, draw any justifiable inference that he was firing at a tree and firing a certain gun and, therefore, he was the man that fired those bullets in that tree. It's just as reasonable to believe they got there earlier or later by somebody else. There's half a dozen hypothesis which are just as consistent with the finding, of putting those bullets in the trees.

The Court: Mr. Hassan, do you wish to speak.

Mr. Hassan: That's the weight of evidence and a question for the Jury.

The Court: Motion denied.

Mr. Harrigan: Exception.

page 2106 } Now, we move to strike all the evidence in the Commonwealth's case at this time, Your Honor.

I think it's conceded that the case is strictly a circumstantial case and the rules governing the weight to be given circumstantial evidence has been set out in many, many authorities of Virginia and elsewhere. Perhaps it's best stated in *State versus Bennett*, 117 Southeastern, 371 at:

"... what are the rules governing the ascertainment and determination of the guilt of an accused in such a case?"

where the evidence is wholly circumstantial or just stated which amplifies somewhat the principles laid down in *State versus Flanagan*:

"First. It is essential that all the circumstances from which the conclusion is to be drawn shall be established by full proof, and the party upon whom the burden of proof rests is bound to prove every single circumstance which is essential to the conclusion, in the same manner and to the same

page 2107 } extent as if the whole issue had rested upon the proof of each individual and essential circumstance.

Second. All the facts and circumstances, when established by full proof, must be consistent with the hypothesis of the guilt of the accused.

Third. It is essential that the circumstances should be of a conclusive nature and tendency. Evidence is always indefinite and inconclusive, when it raises no more than a limited probability in favor of the fact, as compared with some definite probability against it, whether the precise proposition can or cannot be ascertained. It is, on the other hand, of a conclusive nature and tendency, when the probability in favor of the hypothesis exceeds all limits of an arithmetical or moral nature. Such evidence is always insufficient where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whenever,

page 2108 } therefore, the evidence leaves it indifferent

which of several hypotheses is true, or merely establishes some finite probability in favor of one hypothesis rather than another, such evidence cannot amount to proof, however great the probability may be.

Fourth. It is essential that the circumstances should to a moral certainty actually exclude every hypothesis but the one proposed to be proved."

Now this same law has been quoted in case after case and in *Hert versus Commonwealth*, 159 Virginia 880, it states:

Where the evidence introduced by the Commonwealth to convict the accused considered collectively as it must be when circumstantial evidence is relied upon and justice is considered with guilt. That interpretation which acquits the accused must be received for it is fundamental if there is any reasonable doubt of his guilt, there can be no conviction.

Our position on that is if the Commonwealth's page 2109 } own evidence is just as consistent with innocence as it is with guilty, then there is no Jury question because the Jury is not at liberty to guess as to one or the other but they must, as a matter of law, find there's a reasonable doubt and that is a Court decision.

Now, in—

Mr. Hassan: What was that citation?

Mr. Harrigan: 159, 880.

Mr. Hassan: I got the 880.

Mr. Harrigan: Now, the Hert case is a case cited 1932, is a homicide case and this is a case where a father and a son had been indicted for murder and the father and the son were both in the same room when the shooting took place.

There was evidence to the effect that there were several shots. One was louder than the other and there was evidence to the effect that after the shooting the father left the scene and he was, thereafter, arrested. And the fact that as outlined in this on Page 888, pertinent facts states that within three-quarters of an hour after Bill Hert left page 2110 } the mill he returned with his father, John Hert, a man of sixty-five years of age. Grover Gray and his companions were still there. John Hert exchanged greetings with these parties. Mrs. Moore left the room as the Herts entered and stood on the stairway when it happened. The two witnesses stated that John Hert had his hand in his hip pocket and appeared angry. There was some discussion back and forth between them. Then Grover Gray said go on, I

don't want any trouble. Bill Hert repeated his request to his father and the accused repeated some answer. And as Grover Gray reached for a basket, Bill Hert shot him several times. One bullet struck him in the back.

Bill Hert was tried and found guilty of murder in the first degree and sentenced to thirty-five years. For the aiding and abetting and encouraging his son to kill him, the father was brought to trial and on the evidence they found that he was guilty but the Court said the evidence did not support the verdict and the Court applying the well established principles, said that mere presence when a crime is committed, is, of course, not sufficient to render one guilty as an aider and abettor. It goes on to rule that the evidence introduced by the Commonwealth could not convict the accused when considered collectively as it must be the circumstantial evidence relied upon which is just as consistent
page 2111 } with his innocence as guilt and when this is true,
that interpretation which acquits the accused
must be received for it's fundamental if there be a reasonable doubt of his guilt, there can be no conviction.

Now, it's obviously true that there is no indication in Virginia that you could find wherein the Court strikes the evidence because you can't appeal them to the Supreme Court, if the Court strikes the evidence of the Commonwealth. In every case but one which went to the Jury where the Court considered the evidence after the Jury verdict and considering the weight of the Jury verdict and this case was reversed and remanded.

Now, almost every other case, *Williams versus Commonwealth*, 193 Virginia 764, was a case which by analogy can apply to this particular case and that is the principles originally stated on circumstantial evidence that the Court has applied to every type of case from larceny, embezzlement and homicide. In *Williams versus Commonwealth*, it was a larceny case. A larceny case where a man was accused of breaking and entering. He had certain items on him, namely, two bent dimes and two nickels which were marked with a single fingernail polish which the proprietor identified as
page 2112 } being similar to the type coins in their possession when the place was robbed. There was evidence to the effect that this type of coin was not uncommon in that vicinity.

And again, the question was whether the evidence was sufficient to support the verdict and they stated as before, that the evidence presented in this record is insufficient to convict

the accused, if guilt has not been established and beyond a reasonable doubt as required by law.

The Commonwealth has said little more than the accused had the opportunity to commit the crime. Others had equal opportunity and no burden is upon the accused to point out the guilty person, which in this case we have here, there is plenty of evidence to indicate someone else could have been the perpetrator of the crime and this case stands for two propositions, and we're under no duty to point out who was. And it does not help the Commonwealth's burden simply because they did not. This case goes on and states, and the principle is in *Lee's* again where the facts are established which are susceptible with two interpretations. One, is the Jury must give an interpretation more favorable to the accused under the facts and circumstances in the case. Suspicion of guilt is not sufficient. It must be shown beyond a reasonable doubt that the accused is the criminal agent and

the Commonwealth has failed to carry this
page 2113 } essential burden in this case and it was reversed. Now, in all these other cases, it goes into evidentiary facts and the bearings they had on the case.

In *LaPrade versus Commonwealth* it states several points which are consistent and by analogy applies to the case at bar here. That was an arson case where the accused was convicted of maliciously burning in the nighttime a stable containing livestock.

Now under the facts of that case:

"... human footprints made by someone whose feet were clad only in socks were distinctly visible in soft red mud around the barn, which contained small particles of isinglass. When the shoes worn by accused were examined on the night of the fire, mud, containing particles of isinglass and similar to that near the barn, was found therein and accused's feet were smeared with mud of similar character. Though the isinglass-flecked mud in the shoes and on his feet would not furnish convincing proof of his presence at the barn, it would disclose a probability of that fact and
page 2114 } evidence that accused had burned his shoes at a time subsequent to the fire was admissible."

It goes on to state:

"... relied upon by the Commonwealth is wholly circumstantial, then to establish guilt beyond a reasonable doubt all

necessary circumstances proved must be consistent with guilt and inconsistent with innocence."

That does not mean the whole sweeping block of circumstances be consistent with guilt but every single essential fact in the chain of circumstances must be consistent with the guilt of the accused and not consistent with his innocence.

The Court: What is the citation of that?

Mr. Harrigan: 191 Virginia 411.

It goes on to say:

"They must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. To accomplish that, the chain of necessary circumstances must be unbroken and the evidence as a page 2115 } whole must satisfy the guarded judgment that both the *corpus delicti* and the criminal agency of the accused have been proved to the exclusion of any other rational hypothesis and to a moral certainty.

What inferences are to be drawn from proved facts is within the province of the jury and not the court so long as the inferences are reasonable and justified."

And on that point our position would be if the inferences drawn are not reasonable and justified in the line of the type of exclusion of every reasonable hypotheses other than that of guilt, if they're not reasonable, they're not justified. Well then, it's not a Jury question.

They held in this case that:

"... the evidence indicated that ill feelings existed between accused and the barn owner, who were neighbors, that accused on the night of the fire was parked near the bar and that he was intoxicated, that tracks leading from the barn could be followed to a point near accused's home page 2116 } and that the tracks appeared to be those of a staggering man, but when plaster casts made from two of the tracks at the barn were compared to a cast made from accused's known track, obvious differences and dissimilarities appeared. The paucity of convincing proof of the identity of the maker of the tracks and the lack of certain necessary circumstances to be inconsistent with innocence were of such grave import as to leave the careful and guarded

judgment uncertain as to the sufficiency of the proof to establish the *corpus delicti* and the criminal agency of the accused . . ."

The Court: (Interposing) Beyond a reasonable doubt. Did you say in that case that the accused was found with the red mud on his shoes?

Mr. Harrigan: Yes he was.

It says under footnote No. 1:

page 2117 } "... human footprints made by someone whose feet were clad only in socks were distinctly visible in soft red mud around the barn, which contained small particles of isinglass. When the shoes worn by accused were examined on the night of the fire, mud, containing particles of isinglass and similar to that near the barn, was found therein and accused's feet were smeared with mud of similar character. Though the isinglass-flecked mud in the shoes and on his feet would not furnish convincing proof of his presence at the barn, it would disclose a probability of that fact and evidence that accused had burned his shoes at a time subsequent to the fire was admissible."

Mr. Hassan: It doesn't say anything about mud.

Mr. Harrigan: It said he had mud on his shoes.

Mr. Hassan: It turned on the question of his destroying the shoes.

Mr. Harrigan: And the fact that he destroyed the shoes was admissible. That the accused destroyed his shoes at a later time was admissible.

And on this case they stated:

page 2118 } "The character and sufficiency of circumstantial evidence necessary to sustain a conviction have been often considered. Recently Justices Buchanan, Gregory and Spratley in *Smith v. Commonwealth*, 185 Va. 800, 40 S. E. (2d) 273, *Garner v. Commonwealth*, 186 Va. 600, 43 S. E. (2d) 911, and *Toler v. Commonwealth*, 188 Va. 774, 51 S. E. (2d) 210, respectively, have with care and clarity restated the principles governing its application and sufficiency. To attempt to do so again would be repetitious and fruitless. It suffices to say that if the proof relied upon by the Commonwealth is wholly circumstantial, as it here is, then to establish guilt beyond a reasonable doubt all necessary

circumstances proved must be consistent with guilt and inconsistent with innocence. They must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. To accomplish page 2119 } that, the chain of necessary circumstances must be unbroken and the evidence as a whole must satisfy the guarded judgment that both the *corpus delicti* and the criminal agency of the accused have been proved to the exclusion of any other rational hypothesis and to a moral certainty."

And they reversed this case stating:

"The paucity of convincing proof of the identity of the maker of the tracks and the lack of certain necessary circumstances to be inconsistent with innocence are of such grave import as to leave the careful and guarded judgment uncertain as to the sufficiency of the proof to establish the *corpus delicti* and the criminal agency of the accused to the exclusion of all reasonable doubt."

The Court: I take it in that case even if the evidence that the footprints were clear and satisfactory, all that would have been done was to establish that the accused was at the barn.

page 2120 } Mr. Harrigan: That's right.

The Court: And that there was some doubt on that because the tracks didn't really match his in any way.

Mr. Harrigan: That's about right. But assuming it's similar in some respects to this case, assuming they could infer that Patler was the man they saw fleeing. All that would establish was that a man fled without the further connecting link, connecting him to the perpetration of the crime.

Now, in *Smith versus Commonwealth*, this is another case where even presence at a scene, mere presence is not sufficient.

Now, this is a case where the husband was killed and the wife was home and another individual was home and there was evidence that the wife and the other individual were having an affair and the husband was found hung somewhere in the basement with blood around the house. Both was tried and the wife was found guilty as an aider and abettor and several assignments of error were made. The main assignment of error was that the evidence was not sufficient to convict the wife of the murder of her husband and the Court in this case again reversed and remanded and quoted other cases

of Virginia by stating that the burden was on
page 2121 } the Commonwealth to satisfy the Jury beyond
all reasonable doubt that the death of Mrs. Har-
rison was caused by the criminal agency of the defendant,
quoted from *Harrison versus Commonwealth* and they went
on to say:

"The Commonwealth's theory of what happened is thus
stated: 'That an assailant of sufficient strength to overcome
the deceased came to the home of the deceased at approxi-
mately 9:00 p.m., driving into the side driveway, parking his
car, and not leaving until 9:30 p.m.; that the deceased may or
may not have been in the house at the moment but that he
was bent on catching whoever was paying attention to his
wife; that whether the deceased was in the house at the time
or whether he came in and surprised the intruder in the bed-
room of his wife, a fistic encounter took place in which the
deceased was bruised in several places before being subdued
about the open door to the bedroom and on the defendant's
page 2122 } bed; that the blow on the deceased's temple
knocked him unconscious (Dr. Byers was un-
willing to say that it could not have produced
unconsciousness); that the deceased fell to the floor in the
hallway, the blood from the wound in his head then making
one of the pools of blood; that the assailant and defendant,
either in the belief that he was dead or would die from the
assault, and intending to make it appear that the deceased
had committed suicide, picked his body up intending to carry
it to the basement and string it up; that, when the deceased
was picked up he was still bleeding and was either held up or
replaced on the floor while the second pool of blood was
formed as the parties deliberated and one of them got the
wash cloth from the bathroom; that the deceased was either
strangled with the piece of rope upstairs and then carried
to the basement and strung up or was carried to the basement
and there strangled; and that thereafter any
page 2123 } blood tracks on the floor of the dining room and
kitchen were cleaned up and any other evidence
of a fight having occurred, such as furniture knocked about,
were remedied.'

The trouble about this hypothesis is that in its essential
particulars it is either not supported by the evidence or is
against the evidence, and its conclusion as to this defendant's
participation is derived from speculation and not from the
evidence.

It is not necessary to detail the evidence again. It is enough to say that the evidence is not sufficient to establish that there was a fight in which the deceased was subdued before the open door of the defendant's bedroom and on her bed; it is not proved that the blow on the head of the deceased knocked him unconscious. The evidence shows that the deceased did

not fall to the floor in the hallway. It does not
page 2124 } furnish ground for a valid inference that
the assailant and this defendant picked up the
body of deceased intending to carry it to the basement and
string it up. It entirely fails to show that any blood tracks on
the floor of the dining room and kitchen were cleaned up, and
other evidence of a fight removed.

When the evidence in this record is carefully analyzed it shows only that the defendant was in the house when her husband met his death, and that she either did not tell what she knew about it, or gave different accounts of what she did know about it. These different accounts involve more a withholding of information than contradictory statements of fact. None of them disclosed that she played any part in any sort of assault on her husband that caused his death.

The mere presence at a place where a crime is committed is not enough to make one an aider and abetter. Even a willingness that it be done is not sufficient unless such
page 2125 } willingness issues into suggestion or encouragement or help. That this defendant was in the house is admitted."

Then it goes on to say:

"That she did, said or suggested anything that contributed to the death of the deceased is not shown, nor is it a necessary inference from anything that is proved. That she saw the act done is not shown nor is it a necessary inference from anything proved that she did see it. It is only by conjecture that it may be said that she took any part. She should not stand convicted on supposition. It is important that crime be punished. It is even more important that the one punished should first be proved guilty by the evidence. In order for inferences to amount to evidence they must be inferences based on facts that are proved, and not inferences based on other inferences.

These expressions by this court make entirely
page 2126 } clear the conclusion required in this state of the record."

And it goes on to cite the law that mere presence is not enough, and that the failure of the Commonwealth to point out or the defendant to name the guilty party is not allowed to prejudice the presumption of innocence in favor of the defendant.

Then it goes on to quote 162 Virginia:

"We need not undertake to discuss the burden which rests upon the Commonwealth in criminal cases. The jury must be satisfied of the guilt of the accused beyond a reasonable doubt. Such a conclusion must be supported by credible evidence and cannot rest upon conjecture or suspicion."

"It is well settled by numerous cases that it is not sufficient to create a suspicion or probability of guilt, but the evidence must go further and exclude every reasonable hypothesis except that of guilt." That is to say, except that page 2127 } of guilt of the crime charged. * * * The failure of the accused to give any reasonable explanation of his conduct will not sustain a conviction, nor is evidence of ill repute enough."

Then it goes on and says:

"Now, it is true, that after the jury have rendered their verdict and a court is called upon to set it aside as being contrary to the evidence, the motion is heard, under our statute, as upon a demurrer to evidence, and it becomes the duty of the court to consider whether or not the evidence is sufficient to sustain the verdict. But the rule does not leave the jury at liberty to guess, and where a fact is equally susceptible to two interpretations, one of which is consistent with the innocence of the accused, they cannot arbitrarily adopt that interpretation which incriminates him."

It is needless to multiply authorities on this fundamental principle. The result of the evidence is that only page 2127 } by speculation or guess can it be said that this defendant aided or abetted in the commission of the crime and the verdict against her must be set aside."

And that is *Smith versus Commonwealth* 185 Virginia 800
The Court: 800?

Mr. Harrigan: Yes, Your Honor.

There are other cases, 187 Virginia 265 where it again goes into inferences, evidence, where it says that:

"In order for inferences to amount to evidence they must be inferences based on facts that are proved, and not inferences based on other inferences."

And it again deals with circumstances of suspicion in that it says:

"The accused must be presumed to be innocent until his guilt is proved beyond a reasonable doubt, and circumstances of suspicion however strong or grave are not sufficient to justify a verdict of guilt."

And there's a case after case which deals with the same principle that mere presence is not enough; that page 2128 } the circumstantial evidence, no matter how grave or strong, and that is another case of 197 Virginia in *Crisman versus Commonwealth*, Page 17.

The Court: 197?

Mr. Harrigan: Yes, Your Honor.

The Court: What page?

Mr. Harrigan: Page 17.

And this *Crisman* case was reversed and remanded as a circumstantial case on the same points formerly read and it goes into the—actually on page 21 it says:

"The actual commission of the crime by the accused must be shown by evidence beyond a reasonable doubt to sustain his conviction."

This was a case where heroin was on the floor of an automobile and the defendant was in the automobile and they held that that was suspicion and perhaps created a probability of guilt but that's not the testimony. It did not exclude every reasonable hypotheses.

Now, applying all these cases just recited, are all practically the same principle as originally cited in *Lee's* there is *Van Dyke versus Commonwealth* which has one other point which falls into this case and that is 196 Virginia page 2129 } ginia where it quotes *Dean versus Commonwealth*. In *Van Dyke* the Court said that the accidental wounding by an unknown agent cannot be excluded and this was a murder case—no, this is a felony case, the man didn't die. And it goes on to say that conviction may be had in criminal cases on circumstantial evidence alone but it should be acted upon with utmost caution and the burden is

on the Commonwealth to show the time, place, motive, and means in pointing out the accused as the criminal agent.

Now, our position based on this law, these cases is that this is a totally circumstantial case.

Now, the Commonwealth has put on, I don't know how many witnesses.

Mr. Hassan: Sixty-nine.

Mr. Harrigan: Sixty-nine witnesses and this is what they've shown.

Now, we accept the proposition at this stage of the trial that the Commonwealth's evidence should be viewed in the most favorable light to the Commonwealth and that's all we have in evidence right now, is the evidence of the Commonwealth.

We had the first witness, a Mr. Hancock, who came on. He didn't add anything at all except he thought he heard somebody on the roof.

page 2130 } Now, we had a Mr. Ballard who added even less. He said he thought he heard the shots and I think he said he saw Rockwell point.

Then we had Mr. Hall who was in the laundromat and hadn't seen Rockwell before that day.

We have all the testimony and we're confident that that testimony proved that Rockwell did in fact die and that he was shot and as a result of the shot, he expired.

Then we have the testimony of Dr. Enos which was medical testimony; we had Dr. Beyer who was also medical testimony.

We had Sergeant Schoupe who added very little. All he did was take pictures of the scene and they found shell casings on the roof and apparently found one on the ground and he testified that he brought Mr. Rockwell's clothes up to the police station, none of which was admitted into evidence.

And there was John Hancock. He testified he was there that day and felt a pulse. That's about all.

Thelma Burgess. She said she saw a man running, can't describe him.

James Cummings and the other barber said they heard the shots and ran around Seven Eleven and didn't
page 2131 } see anything and ran down the street and saw somebody running and they chased him. Neither one could identify him and couldn't describe him and so forth, only that he was dressed in dark clothing which looked like a dark trench coat and so on.

In the light of that description we have the tapes also

which indicate it was a man of Mexican or Spanish descent with dark clothes, yellow socks.

Now, some of the other witnesses were just fill-ins. We had Mrs. Kilpatrick. The most she said was that—she changed her mind at least three times before she came to Court—but the person she saw looked something like Patler.

We had Mrs. Thoburn who said at the police station that Patler's features were not inconsistent with the man she saw running. That's her testimony.

And we have Hall who said he saw a man running. He told his wife that he couldn't identify him. He told Trooper Ashley that he couldn't identify him. He told the next door neighbor he couldn't identify him. And after seeing this picture and reading the article in the newspaper two or three days later and after talking to the detective he came to the conclusion that he could identify Patler as the man he saw running.

We had Becky Middleton who didn't add any-
page 2132 } thing at all. She said she saw somebody running, saw the back of his head.

We had several people that then conflicted. Some said he ran down into the woods down Liberty Street and others said he ran directly into the woods and others said they don't know where he went.

Then we have Inspector Cole who testified that he arrived down around Washington Street at approximately 12:20, somewhere in that area, 12:25. He saw a man walking wiping his face with a towel. He had on a yellow shirt, that he didn't recognize him, that he went around the block and saw the man again or what he thought was the same man and he didn't recognize him at that time either. This man ducked between two houses.

Then we have Davis who said he saw Patler standing on a street corner and he arrested him and his pants were wet.

Now, the theory that the Commonwealth has proceeded on through this whole case is simply this, that whoever fired the shots, fired them from the roof; that whoever fired the shots must have run across the roof and came down in the back of the Goodwill somewhere and jumped down and started running down Liberty Street.

Now, whether this man who they suggested
page 2133 } ran down Liberty Street was in fact, did in fact have anything to do with the shooting, there's absolutely no evidence at all that he did.

They tried to connect that fleeing individual with the roof and the shooting itself. To do this they took tar samples

from the roof; they took paint samples from the side; they took seventeen boxes of samples of gravel from the roof all the way along this area where the individual allegedly was supposed to have fled.

They had Patler's clothes sent to the F.B.I. to look for powder burns, paint, tar, anything.

They found a coat. They just happened to find that and a hat. They sent that over to the F.B.I. trying to tie it in as closely as possible with the coat that the people saw this man have on when he was running and the F.B.I. came in and they testified as to the coat and the coat is not an unusual coat. It's a standard coat. They testified there was nothing connecting the coat with the gun at all. There was nothing connecting the coat with the roof at all.

They testified there was no tar on the coat. They testified there was no paint on the coat. As a matter of fact, they conclusively showed this coat in all probability was not on the roof by their testimony.

page 2134 } They showed that this hat, which I don't think is even in evidence, was not on the roof. They had not connected it up with the coat to Patler by any means whatsoever. As a matter of fact, they have gone over it with a microscope and as a result of those examinations do not connect it up with Patler. As a result of those examinations, they do not connect it up with what they believe to be the murder gun.

Then the F.B.I. testified that they examined Patler's clothes, that there was no powder on the clothes, there was nothing which would indicate that he had been near that gun.

Mr. Stuart testified that the man he saw go over the wall—he saw both of his hands—he didn't have anything in his hands.

Not one witness testified that he had the gun in his hands. So it had to be in the clothes somewhere. But the evidence that the F.B.I. provided certainly did not point to the guilt of the accused. If it pointed to anything at all, it pointed to his innocence. In fact, if it points to anything at all, it shows beyond a reasonable doubt that the fleeing man may not have had anything at all to do with this particular shooting.

They examined the shoes. They found some dirt in the shoes and the dirt in the shoes not only did not
page 2135 } match one or two of the samples of soil along this alleged escape route, which I think the law of averages would let it match at least one or two, according to the testimony of the F.B.I. man, the soil on the shoes, he

didn't find any soil on his shoes that matched any of the seventeen samples which is another part of the Commonwealth's evidence which is consistent with innocence.

Then the F.B.I. people testified there was no hairs on the coat, there was no hairs in the hat which matched Patler's. Now, the fact that there wasn't any hair that matched somebody else, certainly you cannot infer somebody else didn't have them on if you're going to infer that this was the coat and hat that was involved.

Then when the F.B.I. testified that there was no fingerprints on the gun, there was no fingerprints on the bullets, which is just sort of negative. That means nothing was there so that doesn't create any inference one way or the other. The only evidence that they have on which they're trying to base a conviction in this case is that they caught Patler twenty-five, twenty-eight or thirty minutes—I think it was 12:28—and they have evidence that the shooting took place at 11:58—
they caught him thirty minutes later a mile away.

page 2136 } The Court: I thought it was 12:02?

Mr. Harrigan: That's when the report came through, and I think the coroner's report said the shooting took place at 11:58.

So they found him a mile away under what they deemed to be suspicious circumstances. They believed he ran from them, if he was the same person. And you have to infer the person who ran was the same person. And you have to infer the person who ran was the same person.

Some two years ago, 1964, Mr. Lloyd testified that he loaned him a gun and almost immediately thereafter, and they brought out this testimony, that Patler had told him the gun had been stolen; and that they've shown that there was a gun similar to this down in Spotsylvania, by Mr. Pace I believe That was some eight months ago.

Now, presumably the necessary inference which they have to draw is that since the gun was down there and since he had access to it down there, therefore, he had access to it and he had it August 25 also.

That they produced three Nazi witnesses who said that they've seen Patler in a similar coat, similar coat to the one that was found. But there hasn't been any evidence at all connecting Patler up with the shooting itself. There's evidence from a remote period of time that he may
page 2137 } have had access to the coat, he may have had access to the gun, that there's evidence there was bullets fired in a tree down at a farm where he went occasion-

ally and from that the question comes down to whether that leave a Jury question as to whether he in fact had the gun, that he had the coat, that he was the man fleeing, and the most important thing of all that once you infer all those things then you have to infer the man fleeing was in fact the man that did the shooting.

The evidence is clear. There were three guys running around that neighborhood that day. We know the two barbers were running and we know one other guy was running.

Our position on the case at this stage is that under Lee's and the rule where it states it's essential from all the circumstances from which a conclusion is to be drawn shall be established and the party upon whom the proof rests is bound to prove every single circumstance which is in the same manner and to the same extent as if the whole issue had rested upon proof of every individual answer. That means they have to prove that Patler was—that this man running, whoever he was, was involved, or was the man that actually perpetrated this crime.

There isn't a single scrape of evidence to prove that. You have to infer that this man running was involved
page 2137 } in the face of all the evidence. First, you've got to infer it was Patler that was running. Then you have to infer, even though all the evidence from the F.B.I. indicates he was not there and he was not connected in it, that this man running was in fact the man that did the shooting. You've got to assume the shots came from the roof. You have to infer that also and that the man running was Patler and that the same man running was the man who did the shooting.

It's just lumping one inference on another inference and where it states—what it does here, it hits this third part where it says it's essential that the circumstances should be of a conclusive nature and tendency.

What are these circumstances which they have put forth of a conclusive nature and tendency? It leaves a great deal to be desired. And the obvious example of that is the fact that they found two sets of footprints up on the roof going from the front to the back which did not match the Patler shoe which were not explained. There was some sort of an attempt to put a man on to say he was up on the roof but there was no attempt at all for one reason or another to explain those were his prints or were not his prints and there was plenty of opportunity to do so. So, if Your Honor please, to conclude that they were his prints, it would be based on
page 2138 } the wildest type of conjecture because they

could have been just as easily the assailant or two assailants.

Then we have all the conflict in the descriptions that went out. The fact that the man they saw running had yellow socks on and that came out eight times and that Patler had black socks on. That they apparently didn't look for anybody else and they assumed he ran that way when it's just as reasonable to assume this man who jumped off the wall cut back over the building or back up Wilson Boulevard.

So based on the evidence as it now stands, our position is that the evidence does not establish a *prima facie* case to the exclusion of every reasonable hypotheses of innocence.

It's not a Jury question because the testimony as it now stands is the Jury could do nothing more than guess as to which inferences they wish to imply and under the circumstances, it's not conclusive.

Your Honor, the Jury should not be given an opportunity to guess.

Now, I know the Jury has been sitting here over two weeks and it's probably been considered that they should have a chance to rule on it. I don't think that should even be considered at all. I sympathize with them. They've
page 2139 } been here two weeks. So have I and so has Mr. Hassan. But if the evidence does not support a conviction at this point then the Court should strike the evidence and the defendant should be discharged.

Mr. Hassan: If Your Honor please, I won't burden the Court with further recitation of cases. I think all of the law has been pretty well cited. Some of the cases have been left out on circumstantial evidence.

I noticed he didn't quote Opanowich. I noticed he didn't quote Rawlins. However, all of the principles are there and we maintain that on the basis of the law he cited, all of the necessary circumstances have been proved to establish a rational hypothesis of guilt to a moral certainty and the question now stands as to the weight of that evidence and that is a Jury question.

When he reads from Lee's, he's reading an instruction of the Court that the Court gives to the Jury because the question isn't credibility and weight of the evidence and that's why the defendant asked for a Jury trial so they could determine these hypotheses, credibility of the witnesses, the weight of the evidence.

Now, what really is the evidence in this case, all of the necessary evidence and circumstances?

page 2140 } There is no question but a man lying in wait on the roof of the Econ-o-mat or the beauty shop, through the windshield, shot and killed George Lincoln Rockwell. There is no question but what the gun that was used to fire those shots, that spewed fragments in the car, on the skin and in the body of Lincoln Rockwell exclusive of all other weapons according to the F.B.I. was that 7.63 weapon. This is positive and when this shot rang out, the witnesses to the *corpus delicti*, not to the criminal agent itself, heard running on the roof, heard gun shots, saw Rockwell spin and point to the roof before he collapsed on the ground.

So to a moral certainty that was the weapon and the man was on the roof laying in wait, first degree murder.

What happened? Because of the running on the roof, two barbers ran around the Seven Eleven end of the building and ran to see the man on the roof and they saw no one until they got to Ninth Road and ran east on Ninth Road and then for the first time one of the barber's saw him while the other went straight ahead down the street that the fleeing man did.

We come to the criminal agent. He didn't go around the Seven Eleven side. There is not a centilla of evidence on this, let alone inference, even drawn by the defense counsel indi-

page 2141 } cates any activity from that roof on the Seven Eleven end. It was on the Goodwill end that

Mrs. Kilpatrick saw a man on the fence come back over the wall, come back over towards her car. She watched him through the windshield pass the car and stand behind it so she couldn't back up. Then he came back by her car and had gone over the wall and Mr. Stuart said he saw him when he climbed on the C. A. Crack trash can and climbed over the wall.

The description resemblance of this defendant. These descriptions are consistent with the general descriptions of all those who observed this man who Mrs. Burgess had seen come down from the roof and go towards, her dog chasing him, go towards the parking lot and back over the next wall.

There are three witnesses.

Then he emerges between two houses and Becky Middleton and Mrs. Rotchford see him, the fleeing man. They had a momentary glimpse and a description.

Mrs. Thoburn is coming from the park and walks by him as he is running down face to him bringing her children home from playing in the park. She says he has a fair resemblance. He's going down the west side of the street when he gets to Mr. Hall's house. He crosses to the egg truck turns and looks

up the street while Mr. Hall is looking at him. He goes on the other side and looks again and then down page 2142 } the street.

Mr. Hall told his wife and the police officer, the detective, the only time they talked to him was Saturday. He told his wife and the police that he didn't believe he could identify the man but on Sunday morning, when he opened his paper, he said to his wife they have the right man, that's the man I saw fleeing. Pretty positive identification, identification of a fleeing man. Identification under these circumstances is a dangerous subject matter. It's one that must be looked at in the light of an immediate response, not subsequent, second guessing or subsequent, but a personal identification of the defendant.

Everyone of the persons who saw this man fleeing before the police could get their statements of their description they saw the defendant in the newspapers, on television, and no one knows whether they were identifying the picture they saw in the newspaper or the news media or the picture in their minds, of what they saw at that time and the strongest identification is the mind's reaction to the picture they first saw, not under the pressures of interrogation but on a T.V., in the newspaper, circumstances of identification are stronger. And identification from line of sight is something you

page 2143 } don't understand, you don't know what the basis of it is but Mr. Hall's immediate reaction was a strong, straight forward, sincere identification uninfringed upon by any other hypothesis of any other identification.

The chase went on. The flight went on. Where did it go? Not down Liberty Street but someone surmised. The man at the end of Liberty Street said he heard the running but they did not go by him. It went to the right, up Larrimore Street. They went through the park between two houses. Now what happened? One barber who didn't see him even at Larrimore and Liberty Streets got a description from Warren Goodlett and he took Warren Goodlett's description and went into the second house from the corner and called it into the police. It was not the police description. It was not the barber's description. It was the description of a boy who had joined the barber, who said that he was staying a safe distance back while he was chasing the man and that Warren joined him in the chase. He's the only one that saw the yellow socks. The description that was on the air, that was on the tape, was Warren Goodlett's description until it was corrected in part by

Sergeant Kadel and then the description that was given by Inspector Cole.

This flight went where? Where the coat and the hat were found and then into Bon Air Park and from Bon Air Park to Washington Boulevard. At Washington Boulevard on the north side of the street, Inspector Cole saw a man wiping his face, without a coat.

He did not recognize him because he didn't see his face. He didn't know but what he might be the suspect and he went around the block and when he came back, the man was on the south side, on the Bon Air side, pacing. The towel was around his neck and when Inspector Cole came around quickly, he went in between the houses and disappeared and then the look out was given. Then there were all kinds of cars circling the area and the defendant was apprehended.

Now what were the significant things about the description of the criminal agent in flight all the way from the roof down to the wall through the lot down the street, everybody said that he was wet half way to the knees. What was the description of the defendant when he was apprehended? He was wet six inches above the knee. What are the facts? The man on the roof was in four to eight inches of water, wet half way up the legs. The man on Washington Boulevard, in Bon Air Park, had placed the weapon, exclusive of all other weapons, that killed George Lincoln Rockwell, between two rocks in six inches of water, six inches above the knee. He was wet. What was the weapon, exclusive of all other weapons? It was a gun purchased by Mrs. Lloyd for her son. It was a gun brought to the Nazi Party by Mr. Lloyd. It was a gun loaned to the defendant two years before.

A gun the defendant reported missing but a gun in the possession of the defendant on several occasions, seen by several people from the time that it was missing until he was on duty down in Spotsylvania, Virginia.

Pace saw it before and after the Internal Revenue and after it was reported lost. Pace saw it in Spotsylvania. When Commander Rockwell broke into the room and brought everything up here, the gun wasn't there and this was sometime in March but again the gun shows up as being used for target practice in July of 1967, one month before the killing, when Tom Miller was painting the fences and John Patler was target shooting up in the meadow, after he's out of the Nazi Party and a month before Rockwell is shot.

Pretty conclusive. Now, what about the coat? Two witnesses saw the resemblance of the coat. One says it is the

coat. A strong witness. Uncontradicted. It was a coat that was being described and identified as being a part of the criminal agent and the gun, exclusive of all other weapons that were used.

What about the examination of the roof and the footprints? What about the testimony of the F.B.I.? On the roof we had the day before a Mr. Stevens, who, to keep out page 2146 } of the water, walked on the cross hatches where the footprints were lifted. On the morning of the killing he was walking on those same firewalls with two men. Within an hour and a half or two hours on that same roof, walking there, with the lifting of the footprints and the examination of the footprints only extenuated the fact that there were many people on the roof.

What about the tar? Sure there's tar on the roof, tar all over the roof when he was on the roof. Tar was on these shoes. They were examined by the F.B.I. and their specialist said tar is tar. We can tell you it's tar. We can tell you there's tar on the pants. We can't tell you the tar on the pants didn't get there from the tar on the shoes but we can't tell you that the tar on the pants came from the tar on the shoes which came off that roof because tar is tar. But there's no question it's tar.

What about the samples of dirt? Dirt was found on the shoes but no impurities of a nature to link it to anything in the area. Yet he was apprehended in the area only half the distance of that long mile which could be spelled out and followed and there was some seventeen samples taken. Those did not prove anything on Patler's shoes but they didn't prove anything by virtue of the dirt that was on Pat- page 2147 } ler's shoes either. There was nothing that could be said.

What about the fiber man and the hair man? They didn't find Patler's hair. They didn't find anybody else's hair either. They did look. No one else is here to say this belongs to someone else. Only the three witnesses that said this is Patler's coat.

The fingerprint man didn't find someone else's fingerprints on Patler's gun but they didn't find Patler's either. But the gun is absolute and positively linked to Patler to a moral certainty by all rational hypothesis and it is the weapon exclusive of all others.

Now we have a criminal agent. Mr. Patler with the opportunity and we have, if the Jury desires to weigh and believe it, motive. Several motives and motives that existed

from the beginning of this young man's entrance into that Party and motives that resulted in his leaving the Party and establishing a competitive Party in New York for some unknown reason and a return to the Party and the motive, as one man put it, of the violent argument and then a letter of reconciliation and then more violent arguments, more and more motive and then a discharge with specific charges. This, the Jury can weigh as being a continuous build-up to bring about the animosity necessary to take the opportunity and to have inspired the crime that the evidence allows them to now determine was committed by this defendant.

But in this field of organizations of right wing and left wing, we have a little competitive state. We have one leader and following competing with another wing of the following interfering with another leader of the following and Patler coins the term National Socialist White Peoples Party, leading Rockwell into a field that's more lucrative than the swastika of several years back. And then he's out of the Party and organizes a white power party, a rational hypothesis to a moral certainty is that the man who leads the white power movement must stop Rockwell, just as he told Vincjevich, he's an ego-genius and has got to be stopped. Why has he got to be stopped? Because this evil-genius (indicating) wanted to organize a new party. He wanted to get rid of the competition. He's had trouble with him. He wants to take over. There's plenty of motive and plenty of criminal intent to a moral certainty with a rational hypothesis and not a centilla of innocence on this circumstantial set of facts. The strongest of all cases, stronger than an eye witness because an eye witness sees only what he wants to see and I direct your attention to the eye witness of the roof man, Mr. Milleroy. He was shown a picture taken to show the conditions on the roof and what did he see, "work I performed last March, work I performed in February". All he saw was the workmanship. He didn't see the whole picture. But the circumstantial evidence in all of the necessary circumstances, gives the whole picture beyond a centilla of doubt. This case at this point is ready for the Jury, there being nothing but rational hypothesis and moral certainty of every fact essential under the charge of, death by lying in wait.

The Court: In the opinion of the Court, the Motion to Strike must be denied.

The testimony of the witnesses for the Commonwealth,

if it be believed by the Jury, would have elicited these facts among others.

There had been a prior disagreement between the defendant and Rockwell; there had been an actual threat; he's got to be stopped. We're going to stop him. From this an inference can be drawn, motive.

Secondly, that the defendant conducted some target practice down in Highland County where he was staying at the time with the gun which has been shown by other evidence to have been the murder weapon and from this an inference can be drawn that he made preparation.

Thirdly, that he had the gun on loan and had
page 2150 } it available to him within the period during
which the killing took place.

Fourth, within the Commonwealth's case now the defendant hasn't had an opportunity to put his case on but within the Commonwealth's case, his whereabouts aren't accounted for but there has been no facts which would have denied him the opportunity to be there.

And fifth, a man was seen fleeing from this scene who resembled the defendant. That the shots were fired from the roof. That the coat identified as having been his and the gun identified as having been in possession, were found along the line of flight. That when he was found, his shoes and trousers were wet. There was tar on his shoes and that he was moping his brow and his shirt showed evidence of his having perspired heavily.

From these facts, the Jury can draw the further inference, it seems to me, that the defendant had been on the roof and had fled. I do not see in any of that series of circumstances an inference drawn from an inference. Every one of the inferences seem to me to be drawn from a fact independently established. Now, it's true, a circumstantial fact. But it seems to me, if the Jury wishes to believe this testimony, they have
enough before them to convict the defendant.

page 2151 } They may disbelieve it in whole or in part but
that's their privilege. It does not lie within the
Court to take this case away from the Jury in the present
posture of the evidence, though circumstantial it may be.

Motion denied.

Mr. Harrigan: Not my exception.

The Court has failed—since that is the Commonwealth's evidence that should also be considered and that is, from that evidence it raises a reasonable hypothesis of innocence then that should also be taken as proven at this state of the case.

The Court has systematically picked out what it believes to be circumstances in which the Jury could believe guilt and systematically excluded those circumstances to show innocence and at this posture of the case, I think we have all the circumstances by which the Commonwealth, if proven, are to be taken as proof if not contradicted and all those circumstances, certainly not contradictory by any evidence in this case, are exculpatory in nature and cannot be arbitrarily avoided in picking out circumstances indicating guilt. If that were the case, the Jury would be left merely to guess on which evidence we want to use and which evidence we don't want to use where it's both evidence of the Commonwealth and it cannot arbitrarily refuse to adopt evidence which is not, which is not rebutted by other credible evidence.

page 2152 } The Court: Well, the Court did not intend to make any selection of evidence. I was proceeding to view the evidence in light of the Commonwealth and giving it the rash inference as I must do at this stage of the case.

I do not think that any of the other evidence can be said to be exculpatory. It's merely negative. There's evidence the Commonwealth brought forth that doesn't help the Commonwealth at all but it doesn't help the defendant either. It just leave a total *hiatus*. The fact that no hairs of the defendant were found on the clothing and the fact that no fingerprints were found on the gun, seems to me to fail to do anything for the Commonwealth but they don't do anything for the defendant either. It's not as though there were directly exculpatory matters in the Commonwealth's case such as the defendant was some other place at a specific time. That's why I picked that specifically.

Now, the Jury may choose to view these various inferences differently but for the purpose of indulging the inference most favorable to the Commonwealth that I can on the basis of the evidence at this stage, it seems to me that they would come out as I stated.

Mr. Hassan: I would like the record to show page 2153 } that I consider the *hiatus* referred to by the Judge as a Court created *hiatus* similar to the *Giles* case that requires the prosecution to come in with negative evidence as proof of effort to arrive at a possibility and failure to present them would years from now require retrial or dismissal. Years after conviction when witnesses and the Jury are gone.

M. H. Ashley

The Court: Well, this subject was thoroughly covered on the Motion to compel the discovery of the evidence.

Prosecution has evidently produced all the evidence it had available to it whether directly helpful to the prosecution or not.

I gather he used the decision of the Supreme Court as requiring that and that's evidently what was done.

You gentlemen want to recess before we bring the Jury in.

(Whereupon, a short recess was taken)

The Court: Call the Jury.

Whereupon, M. H. ASHLEY, was called as a witness on behalf of the Defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

page 2154 } By Mr. Harrigan:

Q. State your name please, sir, and your occupation?

A. M. H. Ashley, Virginia State Trooper.

Q. How long have you been a Virginia State Trooper, Mr. Ashley?

A. Eight years.

Q. Calling your attention to August 25, 1967 were you working on that day?

A. Yes sir.

Q. Did you have occasion to be in the vicinity or in the company of Mr. Stoneburner?

A. Yes sir.

Q. And where would that be?

A. It's a rural road, Edinburg, Virginia, it's west of Edinburg.

Q. Now, is he a butter and egg man?

A. Yes or better known as a huckster, I guess.

Q. While you were with him, did you have occasion to talk to a Mr. Hall?

A. Yes sir.

Q. And did you call Mr. Hall or did he call you?

A. Mr. Stoneburner called Mr. Hall.

Q. And did you talk to Mr. Hall?

M. H. Ashley

page 2155 } A. Yes sir.

Q. And did you have an occasion to discuss with him what, if anything, he saw on August 25?

A. Yes sir.

Q. And would you tell us what Mr. Hall told you?

A. I talked to Mr. Hall on the phone and he told me that he had seen a subject run up beside the truck parked in front of his house and it seemed like he momentarily—he looked like he might have slowed to almost a stop beside the truck and coming running around the front end of the truck and continued on down the street.

Q. I see.

And did you have an occasion to ask him whether he could identify that subject?

A. Yes.

Q. And to the best of your recollection, would you tell us what he told you regarding that subject?

A. I don't recall exactly what he told me.

Q. Well, do you have some recollection of what he told you?

Mr. Hassan: Objection, Your Honor. He said he doesn't recall.

The Court: Over ruled.

page 2156 } By Mr. Harrigan:

Q. Do you have some recollection, any recollection?

A. Yes.

Q. And what is that?

A. This is just merely—I can't say exactly what this was that he told me but it runs in my mind that he told me he didn't believe he would be able to recognize the man he saw run in front of the truck.

Mr. Harrigan: No further questions.

The Court: Mr. Hassan?

CROSS EXAMINATION

By Mr. Hassan:

Q. Did you make any notes or memoranda of this conversation?

W. Edwin Scheid

A. No sir, I don't think I did. I made notes of my purpose for going to see Mr. Stoneburner but I cannot find them.

Q. What was your purpose for being there?

A. I was asked by Sergeant Grieve of the Virginia State Police to go by Mr. Stoneburner's house and check his truck for a possible weapon that could have been placed in the vehicle.

Q. Were you told not to interrogate Mr. Hall?
page 2157 } A. No sir. The main purpose of my interrogation was to find out where the gun could have possibly been placed on the truck and during the course of the conversation, of course, the other thing came up.

Q. So you did not interrogate him in detail about what he said or anything of that kind?

A. No sir. Other than where the person supposedly had ran by the truck and stopped. That was the main purpose of my talking to him on the phone.

Mr. Hassan: Thank you very much.

Mr. Harrigan: That's all.

The Court: May the witness be excused?

Mr. Harrigan: Yes.

The Court: You're excused, Trooper, thank you.

Mr. Morris: Your Honor, may I be excused for just one second?

Mr. Harrigan: Call Mr. Scheid.

Whereupon, W. EDWIN SCHEID, was called as a witness on behalf of the Defendant, and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

page 2158 } Q. Would you state your name—

Mr. Hassan: (Interposing.) I object to the continuance in the absence of Mr. Morris.

The Court: Would you be satisfied if the defendant personally waived it?

Mr. Hassan: I would hope the appeal in Court would. If they would, I would but the law being what it is today I've got to object.

W. Edwin Scheid

Mr. Harrigan: I don't think there's any law that says all counsel are going to have to be present.

The Court: Do you know how long he is going to be gone?

Mr. Harrigan: Just a couple of seconds.

By Mr. Harrigan:

Q. Would you please state your name, sir, and your occupation?

A. W. Edwin Scheid, postmaster, Falls Church, Virginia.

Q. Mr. Scheid—

The Court: (Interposing) Spell your name, sir.

The Witness: S-c-h-e-i-d.

By Mr. Harrigan:

Q. Did you check your records to see who rented Box No. 565 in your post office?

page 2159 }

A. Yes I did.

Q. Who rented that box?

A. May I refer to the paper I have here?

Q. Yes sir.

A. The application was made out for John Patler, Partner, name of the firm is Historical Art Works and Patterns Bargain House, and the kind of business was art works.

Q. What date was that box rented?

A. The box was opened on January 17, 1967.

Q. And is that box still open?

A. Yes it is.

Q. And was it open in the name of John Patler on August 25, 1967?

A. Yes.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

Q. Anybody else named authority to receive mail in that box?

A. The names of the Bargain House, Alice G. Patler, John Patler and the Historical Arts Works.

Q. At any time has any other name been authorized to receive mail at that box, temporarily or otherwise?

page 2160 }

W. Edwin Scheid

A. Not to my knowledge.

Q. Would that require modification of the application?

A. No sir.

Q. It would be done without any modification?

A. Yes sir.

Q. Anything addressed to anyone using that box number would go to that box number?

A. If it was addressed to that box number it would be put in that box, sir.

Q. And you do not know whether anyone received mail at that box?

A. No sir.

Q. Does Mr. Patler have any other boxes in the Falls Church post office?

A. Not to my knowledge.

Q. Did Mr. Patler personally apply for that, the application, or did someone else make the application?

A. I do not know Mr. Patler. I have the Marine Corp No. 16-169-3284.

Q. And that was in January of 1967?

A. That box was opened January 17, 1967.

Q. And the applicant identified himself as a Marine?

A. He gives here, it says type of identification and its been filled in an U. S. Marine Corp page 2161 } No. 16-169-3284. This is a photostatic copy of the application for the box.

Q. May I see that sir?

A. Yes sir.

Q. This is the photostatic copy of your original?

A. Yes sir.

Mr. Hassan: I would like to have that marked for Commonwealth's exhibit for identification No. 67.

(Whereupon, Commonwealth's Exhibit No. 67 was marked for identification.)

Mr. Hassan: I offer this in evidence, Your Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: It will be received as Commonwealth's 67.

Paul Morrison

(Whereupon, Commonwealth's Exhibit No. 67 was entered into evidence.)

Mr. Hassan: I have no further questions. Thank you very much.

The Court: May the witness be excused?

page 2162 } Mr. Harrigan: I have one question.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Now, the number that you read on there, do you know whether that was from a military discharge certificate that everybody gets?

A. I do not know.

Mr. Harrigan: All right. That's all.

The Court: All right, Mr. Scheid, you're excused. Thank you sir.

Mr. Harrigan: Mr. Morrison.

Whereupon, PAUL MORRISON, was called as a witness on behalf of the Defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name please?

A. My name is Paul Morrison.

Q. What is your occupation?

A. I'm a postal clerk

Q. Where?

page 2163 } A. At the post office at Wilson Boulevard and North Courthouse Road.

Q. That's the one right here in Arlington?

A. Right here in Arlington, yes sir.

Q. Now calling your attention to August 25, 1967, were you working that day?

A. Well, no I cannot say I was working for the date does not come to mind, you know, what the particular date in question would be.

Paul Morrison

Mr. Harrigan: Would you mark this?

(Whereupon, Defendant's Exhibit M was marked for identification.)

By Mr. Harrigan:

Q. I show you Defendant's Exhibit M for identification. Can you identify that?

The Court: Wouldn't it be L?

Go ahead.

The Witness: Yes. This is my writing on the receipt for postage.

By Mr. Harrigan:

Q. All right.

And did you give that receipt then?
page 2164 } A. Yes I did issue this receipt.

Q. What date did you give that?

A. On the 25th of August.

Mr. Harrigan: I'd like to introduce this into evidence, Your Honor.

Mr. Hassan: I have some questions before that.

The Court: All right, sir.

Go ahead.

EXAMINATION BY COUNSEL FOR THE
COMMONWEALTH

By Mr. Hassan:

Q. Do you know to whom you gave it?

A. No I don't.

Q. Do you know what time you gave it?

A. No I don't.

Q. Is there any record that would show what time you gave it?

A. No, there are no records kept on such receipts, just personal receipts that any patron would request to show they did spend so much money there at the post office.

Q. Do you have any recollection of to whom you gave it?

A. No I don't.

Paul Morrison

Q. Does this refresh your recollection as to whether you worked or not?

page 2165 } A. Yes it does.

Q. What hours did you work?

A. From 8:00 'til 5:15.

Q. 8:00 to 5:15?

A. Yes sir.

Q. You have no idea what time you gave it or to whom you gave it?

A. No I don't.

Mr. Hassan: I object to it, Your Honor.

Mr. Harrigan: We'll connect it up, Your Honor.

The Court: It will be received conditionally subject to being connected up by their evidence.

(Whereupon, Defendant's Exhibit M was entered into evidence.)

The Court: Excuse me just a moment. In order that I don't lose track, what became of Defendant's L?

Mr. Hassan: You refused that, Your Honor. That was a letter from Hughes.

The Court: All right. Thank you.

Go ahead.

By Mr. Harrigan:

Q. Now, do you ever put times down on these page 2166 } receipts when you give them?

A. No. In fact, it's usually the customer, it's usually accepted that the customer would write the receipt and we'd just stamp it. But to save time, I'd just write the receipt for the patron and stamp it. It's to speed up things.

Q. So ordinarily, the customer would have written that?

A. Ordinarily the customer would have written the receipt and I would have verified that he did purchase such amount of stamps with the date stamp on it.

Mr. Harrigan: Thank you.

The Court: May the witness be excused?

Mr. Harrigan: Yes, Your Honor.

Mr. Hassan: I haven't had cross examination.

The Court: Excuse me.

Mr. Harrigan: Excuse me.

Frank Joseph Shuland

The Court: Excuse me, Mr. Hassan, and go ahead.

CROSS EXAMINATION

By Mr. Hassan:

Q. There's no question in your mind that this is your handwriting?

A. That's my handwriting.

page 2167 } Q. And the customer didn't sign it?

A. No, the customer did not sign it.

Q. So even by handwriting, you couldn't tell who received it, could you?

A. No, I couldn't.

Mr. Hassan: No further questions.

The Court: All right, Mr. Morrison, you're excused now.

Mr. Harrigan: Let me ask you this on this receipt.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Did you give it to the customer after you wrote it?

A. Yes I did give it to the customer.

Mr. Harrigan: That's all.

Whereupon, FRANK JOSEPH SHULAND, was called as a witness on behalf of the Defendant, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Could you state your name please?

A. Frank Joseph Shuland.

Q. And where do you work Mr. Shuland?

page 2168 } A. I'm the manager of the Scott Gas Station,
Sinclair Gas Station, at 3501 Lee Highway,
Cherrydale.

Q. Now, were you working at that station on August 25, 1967?

A. Yes sir.

Frank Joseph Shuland

(Whereupon, Defendant's Exhibit N was marked for identification)

By Mr. Harrigan:

Q. Now, I show you Defendant's Exhibit No. N. Can you identify that?

A. Yes. This is a charge slip for gasoline in my handwriting with my signature on it, certifying the person that bought the gas and this is his copy.

Q. Now what date was that gas sold?

A. The eighth month, 25th day of 1967.

Q. Now, do you know what time that slip was given?

A. No sir.

Q. Now, were you requested to try to determine that?

A. Yes sir.

Q. And could you determine it?

A. No sir. It was just a guess more or less.

Q. Do you have a guess?

page 2169 } A. Well, I determined that it was sometime around noon.

Mr. Harrigan: That's all.

I would like to offer that charge slip into evidence.

Mr. Hassan: Well, I'm going to object until I have a chance to do some cross examining.

The Court: Go ahead, Mr. Hassan.

CROSS EXAMINATION

By Mr. Hassan:

Q. How did you determine the time?

A. Sir, I'm the manager of the station and on the following day I have all of the tickets and I summarize them down in a list of—and I have a pile of tickets of mine and a pile of tickets of the night men and I write them up the next day to send in to my company and this one, if I can recall right, I think it was about No. 6 down on the list.

Now, the whole list was in my handwriting, of course, because I wrote them up. Now, I really have no way of knowing how many of these cards, what was on the piece of this paper were written by me because I haven't got the card. The cards were sent away but on the average day where I have maybe twelve customers, this was like six, I would figure that half of the day and this is only a pure guess.

Frank Joseph Shuland

page 2170 } Q. Now, just a pure guess, could it be wrong?
A. Yes sir.

Q. How wrong could it be?

A. Well, that would be a hard question to answer.

Q. An hour one way or the other?

A. It could, yes sir.

Q. How many pumps in your gas station?

A. There are six pumps, four of which we use.

Q. Four pumps that are used.

How many men were working on the 25th of August?

A. I was the only one on the day shift from 7:30 until 4:00. The first man comes in at 3:00 according to my time records.

Q. And how many credit card machines do you have?

A. One, sir.

Q. Just one. And who puts those tickets into the machine?

A. I do, sir.

Q. Are they always in numerical order?

A. They will come out of the cellophane bag in numerical order.

Q. If you drop one, you go right ahead and put the rest in and then pick them up after you have gotten rid of the customer, don't you?

page 2171 } A. You take the first card out from the stack.

Q. When you take them out of the stack, suppose you drop ten cards, you've got a customer waiting out there, do you pick up what you've got or go wait on the customer?

Mr. Harrigan: I object. He's assuming facts not in evidence. Why don't he ask if he dropped ten cards?

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. Go ahead and answer it.

A. I don't recall dropping ten cards.

Q. You don't recall dropping them.

Suppose you had dropped them, would you pick up the cards first or take care of the customer first, that's what I'm asking?

A. If I had dropped anything of value, I would pick it up.

Q. If they were blanks, they wouldn't be of value would they?

Frank Joseph Shuland

A. Well, the ones in order are dropped in a locked container in the order of the way they were sold.

Q. In order of the way they were sold.

Are they listed in that order or listed numerically page 2172 } cally?

A. The cards are listed numerically.

The cards being put in the slit of the locked compartment of the machine is in reverse order, so the first sale is the bottom card and the last sale is the top card.

Q. If you wait on two customers at once, they would get out of order, couldn't they?

A. You can only make one card out at a time, sir.

Q. One man might be getting eighteen gallons of gas and another a dollar's worth. You'd have him all written up before the man got the eighteen gallons in the tank, wouldn't you?

A. It's possible, sir.

Q. If you had a card all out for him and another man pulled into the station for a dollar's worth, would you take it out of the meter and go ahead with the dollar one?

A. We have to go into the individual sale to make it out so I would presume you would do one at a time.

Q. You don't recall ever filing them out of order in the box?

A. I never have checked for that sir but I don't recall any.

Q. You don't know whether they were out of order or not, do you?

page 2173 } A. No sir. I couldn't stake my life on it.

Q. And you could have written this ticket at any time from 7:15 in the morning sometime until 4:00 in the afternoon?

A. Yes sir.

Q. And you wouldn't be able to tell the next day, the 26th, when you listed it?

A. I would know by the numbers. The numbers on the tickets in which rotation I had written the card up.

Q. What kind of a car was this you were putting this gasoline in?

A. Sir?

Q. What kind of a car were you putting the gasoline in?

A. I don't recall, sir.

Q. Was it a man or woman you sold the gasoline to?

A. I don't recall sir. I don't remember the sale but I did it and that's my signature and I was the only one working.

Frank Joseph Shuland

Q. You don't remember the sale.

Could it have been as late as 1:00 o'clock?

A. I couldn't tell you, sir.

Q. Could it have been as late as 11:00 o'clock?

A. I don't know.

Mr. Harrigan: He's badgering the witness, Your Honor.

Mr. Hassan: I'm just trying to pin it down.

page 2174 } The Court: He's already answered it.

By Mr. Hassan:

Q. In response to a previous question, could it have been more than one hour either way?

A. Possible sir.

Mr. Hassan: No further questions.

The Court: I think the cross examination went to the weight of the evidence rather than admissibility and I'll receive it in evidence as Defendant's Exhibit N.

(Whereupon, Defendant's Exhibit N was entered into evidence.)

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. You're saying it's possible. Now you say it's probable it could be messed up like Mr. Hassan said?

A. I didn't follow your line of question.

Q. Do you think it's probable that you did it the way you ordinarily did it or it's possible that these things happened like Mr. Hassan said.

A. I would think it was taken one card out of the machine and written up and deposited back in the locked
page 2175 } charge box so it wouldn't get lost, like I ordinarily do.

Mr. Harrigan: That's all. Thank you.

The Court: Wait just a minute, Mr. Shuland.

Do you have any questions, Mr. Hassan?

Mr. Hassan: No questions.

The Court: Mr. Shuland, did you say this was a No. 6 out of a total of twelve or this was No. 6 of the usual number as

Claudia Smith

twelve? I've forgotten what your testimony was about the total number that you wrote that day.

The Witness: Sir, as I recall the card, it is for a sale and it's—the closest in the total is about thirty-six sales on this card and half of the business would be about eighteen cards. This would leave it to be in the morning, the first six cards and more or less a guess. I mean, I have no way of telling.

The Court: Did I understand you to say that this card was the sixth on the list?

The Witness: I believe it was about the sixth or seventh.

The Court: And do you recall how many you wrote all that day?

The Witness: Roughly, I think it was thirty-five. I think the attorney has the rotation of the list and he page 2176 } could tell you better than I. This is a long time ago and actually this wasn't reviewed with me at all. In fact, I didn't know the date of the incident of what happened. Until tonight I really had lost the date.

The Court: All right, sir. Thank you very much.

Whereupon, CLAUDIA SMITH, was called as a witness on behalf of the Defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. Claudia Smith.

Q. And your address?

A. Ellsworth Falls, Maine.

Q. Now, calling your attention to approximately September, October and November of 1965, did you have occasion to be in Richmond?

A. Yes I did.

Q. And what was that occasion?

A. The governor, the gubernatorial election.

Q. Were you working for some particular organization during that period? page 2177 }

A. Yes. Rockwell for governor.

Q. And what were your duties down there?

A. I was a secretary and helped with the typing and filing and general duties.

Q. All right.

Claudia Smith

And did they have a headquarters?

A. Yes they did.

Q. Now, how long were you down there in Richmond on the Rockwell for governor campaign?

A. Approximately three months.

Q. Do you know Robert Lloyd?

A. Yes I do.

Q. Did you have occasion to see him down there at any time?

A. Quite often, yes.

Q. And where?

A. In the Richmond Headquarters and at the State Fair of Virginia and at rallies.

Q. And was he also working on the Rockwell for governor?

A. Yes.

Q. Committee?

Now did there come a time when you saw a page 2178 { gun that Lloyd stated belonged to him?

A. Yes I did.

Q. Where was that gun?

A. Well, it was kept usually in the middle desk drawer in the middle of the front desk.

Q. Now, I show you Commonwealth's Exhibit 44A.

Would you look at that?

Have you ever seen that before?

A. Well, that looks like the gun that was down in Richmond.

Q. Now who—did you ever talk to Mr. Lloyd about this gun?

A. I asked him once about it. Well, he said there was a gun in the desk in case I ever needed it and I asked him, I said—I said, "Is this the gun here", I remember, and he said "Yes". He smiled at me and said "Yes it is".

Q. All right.

Now, did Mr. Lloyd and Mr. Rockwell have any difficulties as a result, shortly after the campaign or during the campaign?

A. Well, during the campaign, the Commander and Robert Lloyd were—the Commander was very disappointed with Robert Lloyd because he wasn't paying attention to the campaign and he kept going off. He wasn't—he wasn't never around when he should have been.

Q. What was Lloyd's function in this campaign?

Claudia Smith

A. He was the campaign manager for the Richmond Headquarters.

Q. Now, do you know whether Mr. Lloyd was ever—had he left the party?

A. He had left the party?

Q. Yes.

A. I'm sorry. I don't know what you mean.

Q. Do you know if Mr. Lloyd continued as a member of the Nazi Party or whether at some time or other he left the place?

A. After the elections you're talking about or just any time?

Q. I don't know.

A. Well, I never heard of him leaving the Party. I heard he was dismissed from the Party after the elections.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

Q. Who did you hear he was dismissed from?

A. Who did I hear he was dismissed from?

page 2180 } Q. Yes.

A. Just a moment, let me see. I have to go back—The first time I had heard that he had been dismissed was—there was a very—there was a rally in Washington and my husband and I came down and we talked to—we talked to John Patler, we talked to Colonel Welch and—let me see, I believe young Niales was there and we talked to him and they all said that—I asked about the Lloyds because I had been a fairly close friend with her in the Richmond campaign and I asked how they were doing and they said they had been dismissed from the Party, well, Lloyd had been dismissed from the Party.

Q. Are you a member of the Party?

A. No sir.

Well, may I qualify that?

I filled out an application but I never had it notarized so I don't know whether I'm a member of the Party or not.

Q. Is your husband a member of the Party?

A. I don't know really.

Q. How did you happen to come down to the rally?

A. Because Commander Rockwell had sent out these little

Claudia Smith

pamphlets saying there was going to be this big
page 2181 } rally in Washington to help support our boys in
Viet Nam so my husband and I came down.

Q. When was this rally?

A. It was in March 1967. I think it was about March. I'm pretty sure on that March of 1966, I believe.

Q. Did you go to Spotsylvania?

A. Yes.

Q. Who did you see in Spotsylvania?

A. Colonel Welch. We took—we took down to Spotsylvania—we took Dragger, John Patler, and I think that was all. Then we brought Colonel Welch back up to Arlington.

Q. When is the last time you visited Nazi Headquarters?

A. The very last time?

Q. The very last time.

A. Let's see. Oh, well, not very long ago. Just a couple of days. The very last time we visited Nazi Headquarters we went up to the barracks last night.

Q. Last night.

Did you talk to Lloyd?

A. No.

Q. Is he there?

A. I don't know. I really don't.

page 2182 } Q. Who did you talk to?

A. Barbara.

Q. How long have you known Barbara?

A. I first met Barbara during the campaign when I first came down at a rally in Fredericksburg.

Q. Now, where did you say your home is?

A. It's in Ellsworth Falls, Maine.

Q. Where are you staying in Arlington?

A. In Arlington now?

Q. Yes. Your Arlington address.

A. With Mrs. Helen Lane.

Q. You're staying with Mrs. Lane?

A. Yes.

Q. Now, do you have a gun of your own?

A. Do I have a gun of my own?

Q. Yes.

A. No.

Q. Does your husband have any guns?

A. Well, he has a hunting rifle.

Q. Did he have any Mauser or revolvers or automatics?

Claudia Smith

Mr. Harrigan: I think he's gone a little far afield. We didn't get into this type of thing.

The Court: I gather it's to test her knowledge
page 2183 } of weapons and so forth.

Mr. Hassan: I want to test her knowledge.

By Mr. Hassan:

Q. Does your husband have any guns?

A. He has a hunting rifle.

Q. Any hand weapons?

A. I believe he has a small piece, yes.

Q. What caliber is it?

A. I don't really know.

Q. What did it look like?

A. A small pistol.

Q. Is it an automatic or a revolver?

A. It's a revolver.

Q. Does it look like that gun?

A. No sir. I'm afraid not.

Q. Have you seen any gun like that before?

A. No sir.

Q. Would you know the difference between that and a nine millimeter gun?

A. Not unless you showed it to me.

Q. Do you know if the gun you saw in Richmond was a nine millimeter or a 7.63 or Spanish gun or what?

A. No sir, I don't.

page 2184 } Q. You don't know what the gun was that you saw in Richmond?

A. I know what it looks like. I know it looks like that gun.

Q. You don't know it's that one exclusive of all other Mausers?

A. No sir.

Q. Did you know the serial number of that gun in Richmond?

A. No sir.

Q. What did you do with it?

A. It was in the desk drawer and everytime I went to the drawer to get pencils, erasers and typewriter erasers and so on and so forth, sometimes I just moved it around in the drawer.

Q. Did you ever shoot it?

A. No sir.

Q. Did you ever pick it up?

Claudia Smith

A. Yes sir.
Someone showed me how to load it, not load but cock it only
I wasn't strong enough to.

The Court: Do you remember having cocked it?
The Witness: To pull back like that only I
page 2185 } was holding it down. It pulled back on the thing
on the top.

By Mr. Hassan:

Q. Now, after you left Richmond, have you seen Mr. Lloyd?

A. Since then?

Q. Yes.

A. No, I don't believe I have.

Q. Did you have any difficulty with Mr. Lloyd?

A. No.

Q. Where were you on the 25th day of August, 1967?

A. Ellsworth Falls, Maine.

Q. Did you come to Arlington then?

A. Not on that day, no.

Q. Did you come that weekend?

A. Oh, that weekend, that was the Friday, the 26th?

Q. That's right.

A. No, I don't believe it was that weekend. I think it was
sometime the following week.

Q. Did you go to Culpeper?

A. Not until after the funeral was over, no we didn't go.

Q. You weren't there at the time of the funeral?

A. No.

Q. Have you gone there since?

page 2186 } A. We went after the funeral. We thought
that he had been buried and we went down there
but I haven't been down there since then, no.

Q. What day did you go down there?

A. The day of the funeral.

Q. The day of the funeral?

A. After it was over, yes.

Q. What time did you get down there?

Mr. Harrigan: What is he testing now, Your Honor. We
didn't go into the funeral on direct.

The Court: It does seem a little wide in scope.

Mr. Hassan: I'll tie it up.

Claudia Smith

Mr. Harrigan: Does he want to make her his witness? It's out of the scope of direct examination.

Mr. Hassan: I don't believe it is. I'm testing her veracity.

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. What time did you get down there?

A. I believe it was about three or four in the afternoon.

Q. Was Rockwell still there?

A. No sir.

page 2187 } Q. He was gone?

A. Yes.

Q. Did it surprise you to know that it was a quarter of five before the hearse left down there?

A. Yes.

Mr. Harrigan: Objection, Your Honor. He's assuming facts not in evidence unless he—

Mr. Hassan: (Interposing) I expect to prove it Your Honor. I was there.

Mr. Morris: Are you going to take the stand?

The Court: I think the objection is sustained.

It's argumentative. You can prove it by other evidence.

Mr. Hassan: I'll reserve the witness for recall.

Mr. Harrigan: There's one problem with that, too, Your Honor, and that is the witness is pregnant and she's under doctor's care right now and she's due very soon as I understand it. It's one of the reasons why she was at Mrs. Lane's house.

The Court: Well, if good cause is shown to recall her, she'll be recalled and if she has some medical reason why she couldn't attend, why she won't attend I'll excuse her for the present.

page 2188 } Mr. Morris: If Your Honor please—

Mr. Harrigan: (Interposing) If he wants to examine her now, I'll let him rather than keep her waiting and sitting around.

Mr. Hassan: I'm going to reserve, Your Honor.

Mr. Harrigan: You may have to examine her in the hospital next time around then.

Mr. Hassan: I'm not her doctor. My examination is done in the Court Room.

Claudia Smith

Mr. Harrigan: I have no objection to him cross examining her right now on whatever subject.

Mr. Hassan: He reserved many of my witnesses, Your Honor, and I'm going to reserve her.

Mr. Harrigan: None of them were pregnant.

Mr. Hassan: God help her, and I'm not responsible but I didn't cause it and I wish her the best of luck in the world.

The Court: I'll reserve her.

Do you have some redirect, Mr. Harrigan?

Mr. Harrigan: No.

Mr. Morris: Just a minute, Your Honor.

Mr. Harrigan: Yes I do.

REDIRECT EXAMINATION

page 2189 } By Mr. Harrigan:

Q. You said that you were up—let me ask you this.

Were you good friends with Mr. Rockwell?

A. With Mr. Rockwell?

Q. You, and your husband?

A. Mr. Rockwell, my husband was mostly a friend of Mr. Rockwell's. I knew him and liked him very well.

Q. All right.

Now, you say you visited Nazi Headquarters last night and you talked to Barbara?

A. Yes.

Q. Who's Barbara?

A. Barbara von Goetz, the Commander's secretary.

Q. You mean when you talk of the Commander that you're talking about Commander Rockwell?

A. Yes, Commander Rockwell.

Q. Now, when you first came down from Maine, you and your husband, where did you stay?

A. We were at Doug Niales house.

Q. Where's Mr. Niales now, do you know? I mean is he in this area?

A. No, he's out of town.

Q. Now, how did you happen to get into Mrs.
page 2190 } Lane's house?

A. Well, we had to have some place to stay. We had to have someone that could be available to take me to the hospital if I needed to go and they left town so—

Claudia Smith

Q. Well, who suggested that you stay over there? It wasn't Mrs. Lane was it, it was Mr. Morris?

A. I think so, yes.

Q. All right. Now—just this question.

He was asking whether you went to Culpeper for the funeral. Did you see the hearse down there or any hearse?

A. No sir.

Q. Who was there when you got there?

A. Just some soldiers and I think maybe a few police.

Q. Now, did you talk to anybody down there?

A. No, I don't think so.

Mr. Harrigan: That's all.

The Court: All right.

Mr. Hassan: One question right now.

RECROSS EXAMINATION

By Mr. Hassan:

Q. How long have you lived at Mrs. Lane's house?

A. I believe it's been about a week.

Mr. Hassan: That's all.

page 2191 } The Court: Mrs. Smith, you're excused subject to being recalled in this case.

I direct you to make yourself available as the circumstances permit.

Mrs. Lane: May we approach the bench, Your Honor?

* * * * *

Mrs. Lane: I would like to say that it has been rather pointed at me because it was suggested that I should have this lady stay at my house. But I understand now, they would try to get back at me for the purpose of the trial and it's possible—I hate like the dickens to fight 11/28/67 over it. For instance, if she goes to the hospital, and page 4 } he had to go in the hospital or someplace else, I don't think—

Mr. Morris: (interposing) If Mr. Hassan would let her keep—

Mr. Hassan: (interposing) I can put it on any time I want, Mr. Morris. However, I will make every effort to be prepared to continue with my cross examination by 1:30 tomorrow afternoon.

Claudia Smith

Mr. Harrigan: I would object to cross examination on purely collateral matters or impeachment.

Mr. Hassan: I didn't say anything about impeachment. I want to test her veracity.

The Court: In other words, you're saying if you recall her as a witness it will be by 1:30 tomorrow afternoon and not later than that?

Mr. Hassan: Yes sir.

The Court: I think that's not unreasonable.

Mr. Morris: Suppose we rest our case? Then, he's been calling witnesses out of turn, order, and crosswise. I think it's unfair to the witness. We have enough time. He has had a heck of a leeway going for him on direct examination and in *fiarness* to the witness, who is under medical treatment now because she can't carry the baby the way 11-28-67 she's supposed to and Mrs. Lane who certainly can't page 5 run a motel for the witness. Why can't he accomplish what he's supposed to do—

The Court: (interposing) I have tried, because of the length of this case, to give everyone a chance to take witnesses out of order when they wanted to and to break up the usualness of things.

Mr. Morris: We've got another pregnant witness coming tomorrow morning, which is worse than this one.

The Court: If he thinks he can get to her by 1:30 tomorrow I think it is reasonable.

* * * * *

page 2194 } The Court: Mr. Hassan, are you going to want to recall Claudia Smith?

Mr. Hassan: I was going to recall Claudia Smith. The photograph I had in mind was so foggy that I was going to use to impeach her, that it would not be fair to her or anyone else. It is just too much out of focus.

The Court: Would you relay the message to the witness?

Mr. Hassan: I notified them. I notified Mrs. Lane.

The Court: Would you call the jury.

(The jury was polled.)

Mr. Morris: Barbara Cook, Your Honor.

Barbara Cook

Whereupon, BARBARA COOK, was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Will you kindly give the Court your name and address, please?

A. Barbara Cook, 3718 1st Street, South, Ar-
page 2195 } lington.

Q. Mrs. Cook, where were you employed during the month of August, 1967?

A. Fidelity National Bank.

Q. How long were you so employed there?

A. Nearly two years.

Q. I show you this item. Can you identify that?

A. Yes, sir.

Q. Whose check is this, Mrs. Cook?

A. Mr. Patler's.

Q. Is there anything on that check to indicate that you had any transactions with it?

A. Yes, sir.

Q. What is that, Mrs. Cook.

A. It is a teller's stamp.

Q. What teller stamp is that?

A. It is teller No. 2.

Q. Are you teller No. 2 at that bank?

A. Yes, sir.

Q. Did there come a time when you cashed that check?

A. Yes, sir.

Q. What were your hours at the bank during the 25th day of August, 1967?

A. I went on the window at 9:00 a.m. and on it at 2:00
p.m.

page 2196 } Q. Did you have a coffee break that morning?

A. Probably, I usually always did.

Q. What time did you take your coffee break?

A. From 10:00 to 10:15.

Q. Did you have a lunch break that day?

A. Yes, sir.

Q. What time did you leave for lunch?

A. Around 11:30.

Q. Do you close your window when you go on your coffee break or your lunch break?

Barbara Cook

A. Yes, sir.

Q. Does anyone else use that teller stamp?

A. No, sir.

Q. Turn the check over, Mrs. Cook, for me, please. Is there any endorsement on the back of that check?

A. No, sir.

Q. In the absence of an endorsement, what is the procedure at your bank?

A. Well, it would indicate that I either knew the person very well. It was someone that came in every day or someone that came in and wrote the check out right in front of me and I just didn't see the need to have them endorse it
page 2197 } again.

Q. That check is drawn on your bank?

A. Yes, sir.

Q. If Your Honor please, I would like to introduce the check at this time.

The Court: Is there any objection?

Mr. Hassan: I would like to take one more look at it. No objection.

Mr. Morris: No further questions.

The Court: It will be received in evidence as Defendant's Exhibit O.

(The check previously referred to was marked Defendant's Exhibit O for identification and received in evidence.)

Mr. Morris: If Your Honor please, there is just one point there that I think might need clarifying to the jury.

By Mr. Morris:

Q. Mrs. Cook, with reference to that item, there are certain stamps and numbers on it. Do any of those indicate a time?

A. No, just a date. This would be work that went in before 2:00 on that day.

Q. All work that morning would have gone before 2:00?

page 2198 } A. All work that went up anywhere before 2:00 would have this stamp on it. After 2:00 it would have a later date.

Q. Now, let me ask you this. There is a date of "August 25, '67, 8 12 1023," can you tell the Court and the jury what that indicates?

Barbara Cook

A. That is the date and the number of the proof machine.

Q. Each proof machine has its own numbers?

A. Yes.

Q. When an item goes through a proof machine, it is automatically stamped?

A. Any item that goes through the machine would have that number automatically stamped.

Q. Then, 1023 is your proof machine number?

A. Yes.

The Court: May I see it?

Mr. Hassan?

CROSS-EXAMINATION

By Mr. Hassan:

Q. Who put those red stamps on the face, on the back of those checks, Mr. Morris was just talking about?

A. The bookkeeping department.

Q. You don't put them on?

A. No, I don't.

page 2199 } Q. You don't have any idea what time they were put on then?

A. No, just after 2:00.

Q. Did you turn in any work before you had your coffee break?

A. I could have. I don't turn it in. They pick it up. They come around and get it.

Q. Was any of your work picked up before you had your coffee break?

A. I don't know.

Q. Was it picked up while you were on your coffee break?

A. It could have been.

Q. How long a coffee break do you have?

A. Fifteen minutes.

Q. How long a lunch period do you have?

A. Half an hour and forty-five minutes.

Q. How long did you have that day?

A. I had about forty-five minutes.

Q. Now, do you know whether you received this check before or after your lunch break?

A. No.

Q. Do you have any idea what time you received the check?

page 2200 } A. No, except on my tapes that I have dur-

Barbara Cook

the day where the item would show that it was preferably in the morning.

Q. In the morning, but you don't know what time?

A. No, sir.

Q. But do you think it was before 11:30?

A. Yes, sir.

Q. Was your work picked up before 11:30?

A. I don't know.

Q. And you don't know whether it was picked up while you were at lunch?

A. No.

Q. You don't lock up your work when you go to lunch?

A. No, you don't lock up your work so they can pick it up.

Q. Could it have been received before your coffee break?

A. It could have.

Q. You have no idea at all what time you received it?

A. No.

Q. Thank you very much.

Mr. Morris: If Your Honor please, I am going to ask the Court to keep Mrs. Cook on call in order to get page 2201 } the tapes from the bank to show where the item was listed.

The Court: All right.

Now, Mrs. Cook, let me ask you one question before I get to that. Where is the location of the bank in which you work?

The Witness: It is right across the street on the corner of Courthouse Road and 14th Street.

The Court: That was the bank in which you were working on that day?

The Witness: Yes, sir.

The Court: Now, you are released subject to recall. You may be needed later in the trial as a witness, so you are not to discuss your testimony with any person other than counsel for the defense or Mr. Hassan. You don't have to talk to them if you don't want to but you may speak to them, but not to anyone else until the trial is over. Thank you and you are now excused.

CROSS-EXAMINATION (resumed)

By Mr. Hassan:

Q. Let me ask a couple of questions. Maybe they won't bother recalling her. I think she is on call anyway.

Barbara Cook

Do you have any idea of the volume of business you did from the time you opened until 10:15?
page 2202 } A. Not really.

Q. Your tape would show that volume of business, would it?

A. No, it would just show the whole day's volume.

Q. It would just show the whole day's volume?

A. Yes.

Q. So you wouldn't be able to tell from that tape whether it was before 10:15 or after 10:30, would you?

A. No.

REDIRECT EXAMINATION

By Mr. Morris:

Q. That is the amount of the checks you cashed that day?

A. The bank pays all the checks that I cashed that day.

Q. Was there anything unusual about your work load on August 25th?

A. No, sir.

Q. A normal Friday morning?

A. Yes.

Q. Your Honor, I think we should have the tape, if Your Honor please.

The Court: Have you made arrangements to get it or are you going to have to subpoena the bank or what?
page 2203 } Mr. Morris: I don't think so. We had seen the tape and Mrs. Cook had seen it. We didn't subpoena the tape because, at the time we talked to her two months ago, she did take it down and her memory apparently isn't as good as the day we talked to her in the bank.

Mr. Hassan: I don't like the inferences that are being stated here.

The Court: I don't think there is any inference involved.

Mr. Hassan: He is kind of impeaching his own witness, if you know what I mean.

The Court: It is perfectly normal not to have as clear a memory as you would the day after the occurrence.

Is the tape available to you and could you get it?

The Witness: Well, I couldn't get it now. I no longer work there.

Mr. Morris: I think Judge Embrey would give it to us, Your Honor, we talked to him before.

The Court: You will have to make those arrangements.

Sharon Ann Luba

If you need a subpoena *duces tecum*, you will have to get an order for it.

Mr. Morris: Isn't your teller stamp on this check?

The Witness: Yes, sir.

page 2204 } Mr. Morris: You put it there, didn't you?

The Witness: Yes, sir.

Mr. Morris: You stamp all checks you cash?

The Witness: Yes, sir.

Mr. Morris: Thank you.

(Witness excused.)

Mr. Harrigan: Mrs. Luba.

Whereupon, SHARON ANN LUBA, was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name please, and your address?

A. Mrs. Sharon Ann Luba, 4921 North 28th Street, Arlington.

Q. Where do you work, Mrs. Luba?

A. We have a family business. I am treasurer of the corporation, Arlington Paper Supply Company, Incorporated.

Q. Where is the Arlington Paper Supply Company, Incorporated, located?

A. 3616 Lee Highway, Arlington.

page 2205 } Q. Have you been employed in any other capacity previous to this?

A. Yes, sir. I had some college experience and then I worked for Philco Corporation. I was security officer of Philco Corporation.

Q. Security officer for Philco?

A. Yes.

Q. Do you know John Patler?

A. He has come into our store.

Q. Is that the full capacity that you know him?

A. Yes, sir.

Q. Do you know anybody else, any Nazis involved in this case?

A. No, sir.

Sharon Ann Luba

Q. Now, calling your attention to August 25, 1967, did you have occasion to be working at the Arlington Paper Supply Company?

A. Yes, sir.

Q. Who was in the store with you earlier that morning?

A. Well, my father who is the president of the corporation, my mother, and we have two boys that work with us. They're mostly in the warehouse. They come in and out.

Q. Now, did there come a time that morning
page 2206 } when your father left the store?

A. Yes, sir.

Q. Do you recall the circumstances under which he left the store?

A. Well, about 10:00 o'clock or 10:15 he had been complaining that his eye was swollen. It was all red and swollen and I suggested that I call my pediatrician because the same type of thing had happened to one of my children to get the same prescription, so he left to get an order. He got about two or three orders on Friday and he left to get an order.

Q. Where did he leave to?

A. He left for Cherrydale Drug Store.

Q. Approximately what time did he leave?

A. Between 10:15 and 10:30, more like 10:25, because right after he left, I called the nurse and got the prescription.

Q. All right. Did you get the nurse on the phone?

A. Yes, sir.

Q. How long did you talk to her?

A. About five minutes.

Q. Did you have any customers in the store at that time, right after you called the nurse?

page 2207 } A. No.

Q. Did there come a time when some customers came in?

A. Yes, sir.

Q. Did you and your mother start waiting on them?

A. (Nodding.)

Q. Did there come a time when you saw John Patler come in the store?

A. Yes, sir.

Q. Now, approximately what time was it that you saw him come in?

A. It was between, as I say, I spoke to her at 10:30, 10:35, on the phone and we had no customers for another ten minutes or so and when we had a few customers and he came in and it was roughly about 11:00 to 11:15.

Sharon Ann Luba

Q. About 11:00 o'clock? Now, when he came in, did you wait on him immediately?

A. No, sir.

Q. How long was it before you had a chance to wait on him?

A. He stood to the side for about five minutes.

Q. Did there come a time when you did wait on him?

A. Yes, sir.

Q. Was some purchase made?

page 2208 } A. Yes, sir.

Q. What did Mr. Patler buy?

A. He bought a hundred envelopes.

Q. Now, these hundred envelopes, do they come in a package of some sort?

A. Well, they're boxed for a thousand five hundred, but this particular box was broken so I had to count out the hundred envelopes.

Q. Did you count out the hundred envelopes?

A. Yes, sir.

Q. After you counted out the envelopes, then what did you do?

A. Well, I put them on the main desk and went in the back to the chart to see the price for the hundred count on the envelopes. Then I came back, wrote the ticket up and put them in a bag.

Q. Put them in a bag?

A. Yes, sir.

Q. Now, how long was Mr. Patler in the store during this transaction? Waiting while they were counted?

A. About fifteen minutes.

Q. Now, did you see anybody with him?

A. No, sir.

page 2209 } Q. Do you recall how he was dressed?

A. Summer clothes, pants, shirt.

Q. What kind of shirt? A white shirt or a sport shirt?

A. It was like a golf shirt type of thing.

Q. Did he have any coat on?

A. No, sir.

Q. Did you make any record of this transaction?

A. Yes, sir, we have wholesale sales and retail sales. We make out the small ticket for the small retail sales.

Q. Now, I show you Defendant's Exhibit No. P. Can you identify that?

A. Yes, sir. That is one of our small retail sales tickets.

Q. Just how do you identify that as yours?

Sharon Ann Luba

A. Well, we have the little sales book. This is my handwriting and our rubber stamp at the top.

Q. So you wrote that yourself?

A. Yes.

Q. What was this for?

A. One hundred, eleven and a half by fourteen, open envelopes.

Q. What is the date of that?

A. 8-25-67.

page 2210 } Q. August 25th?

A. Yes.

A. Yes, sir.

Q. I'd like to offer that into evidence.

The Court: Is there an objection?

Mr. Hassan: No objection.

The Court: It will be received as Defendant's Exhibit P.

(The item previously referred to was marked Defendant's Exhibit P for identification and received in evidence.)

By Mr. Harrigan:

Q. Now, how many times had you see John Patler in your store, previous to the 25th of August?

A. Twice before.

Q. Now, is this the same man that bought those envelopes?

A. Yes.

Q. Are you positive?

A. Yes, sir.

Q. I don't know if he got that last question, did you hear that last remark?

page 2211 } A Juror: It is just difficult.

By Mr. Harrigan:

Q. Now, did you know Mr. Patler by his name?

A. No, sir.

Q. How did you know him?

A. As Mr. Ervin's son-in-law. Mr. Ervin had a business behind our store for a number of years.

Q. You knew him as Mr. Ervin's son-in-law?

A. Yes.

Q. Is that why the ticket reflects Ervin?

A. Yes, sir.

Sharon Ann Luba

Q. That is all.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Was this a sale by cash or check?

A. By cash.

Q. Cash?

A. Yes, sir.

Q. Do you have any idea what time this took place?

A. Yes, sir.

Q. What time?

A. It was between quarter of eleven and 11:15.

Q. When Mr. Harrigan asked you, you said
page 2212 } roughly 11:00. Is that roughly 11:00 when it
was over or when it began?

A. It was roughly 11:00 o'clock.

Q. But it could have been quarter of?

A. It could have been quarter of or quarter after. Yes, sir.

Q. Would you describe the type of shirt Mr. Patler was
wearing?

A. Just that it was a summer shirt, type of shirt.

Q. Was it a ban-lon shirt or a cotton shirt?

A. I couldn't say. It just looked like the kind a man would
wear when he was out playing golf.

Q. Let me show you Commonwealth's Exhibit No. 8E and
ask you whether or not it could possibly have been a long
sleeved shirt likt that, rolled up?

A. It might be, sir, I'm not that positive.

Q. You don't remember what the color that the shirt was?

A. No, sir.

Q. Do you remember what the color of his pants were?

A. No, sir.

Q. Do you know what kind of shoes he was wearing?

A. No, sir.

Q. Now, did there come a time on the 16th day of October
at about 2:25 p.m. when you talked to Detective
page 2213 } Crickenberger of the Arlington County Police
Department?

A. Yes, sir.

Q. At that time, did you tell him it was a ban-lon shirt?

A. I said it was a summer shirt that I remember.

Q. You didn't use the word "ban-lon"?

A. Not that I remember.

Q. No further questions.

Paul Sale

The Court: May the witness be excused?

Mr. Harrigan: Yes, Your Honor.

The Court: Mrs. Luba, you are excused.

(Witness excused.)

Mr. Morris: Your Honor, our next witness is out in the hall. He wasn't subpoenaed or anything. He is out there waiting. May I go tell him?

The Court: Yes, sir.

(Whereupon, the witness was sworn.)

Whereupon, PAUL SALE, was called as witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

page 2214 } By Mr. Harrigan:

Q. State your name, please.

A. Paul Sale.

Q. What is your occupation?

A. Commercial photographer.

Q. Where is your office?

A. Security Building, 2007 North 15th Street, Arlington.

(The photograph previously referred to was marked Defendant's Exhibit Q for identification.)

Q. I'd like to offer this in evidence, Your Honor.

Mr. Hassan: Objection.

The Court: Have you had it marked?

Mr. Harrigan: Yes, Your Honor.

The Court: What is it, Q?

The Clerk: That one is Q.

The Court: You had better lay some foundation for it. There has been no testimony.

Mr. Harrigan: The only foundation, I think, Your Honor is a seal from the United States Department of Interior Geological Survey. It is under seal by the Acting Director which certifies this is an accurate and true copy and "Pursuant to the act approved August 24, '12, as amended (37 Stat. 497, 5 U.S.C., sec. 488) I hereby certify that the annexed is a true

Paul Sale

photographic reproduction of the original aerial film negative designed *Project GS-VBBM*," and so forth.
page 2215 } Mr. Hassan: Keep on going with that "and so forth." That is the date it was taken.

Mr. Harrigan: All right. "Roll 1, Exposure 164 dated September 26th, 1964, and I further certify that the original negative is in the official files of the Geological Survey."

What it purports to be is an aerial photograph of the extended area in the county, including the area we are concerned with.

Mr. Hassan: Two years and eleven months before. I object. It is too remote.

Mr. Harrigan: It gives a bird's-eye view of this whole area.

The Court: Do you gentlemen know of any significant changes of the landscape in that area within this two-year period?

Mr. Harrigan: No, Your Honor.

Mr. Hassan: I know of considerable construction in that area from 1964 to date. There's been the development of the Seven Corners. There have been changes in Route 66 and land which was acquired which is no longer there in '67. This aerial map was used in connection with some of that. Bonair

page 2216 } Park is completely changed from how it looked in September, '64 because you represented the State Highway Department bought houses that have been all removed and it doesnot resemble the area as of August 25, 1967.

Mr. Harrigan: There's no showing that his map did either, Your Honor.

Mr. Hassan: I didn't say anything about my map. I had mine marked as a community art affair.

Mr. Harrigan: I think his argument goes to the weight, not the admissibility.

The Court: It seems to me that if the—

Mr. Harrigan: We are not really concerned with this map at all. We are concerned with a blow-up of a part of that map.

The Court: It seems to me that if the jury is advised there may have been some changes in the landscape since that time, and this is only given to them as a general orientation, any error would be avoided in it. No doubt there have been some minor changes in the landscape, but if any became material to the case, they could be pointed out. For the purpose of general orientation such as the map would be used, I think it is admissible, but certainly you are free to comment to the

Paul Sale

jury about any changes that might have taken place in the appearance of the landscape.

page 2217 } Mr. Harrigan: You better prove it.

Mr. Hassan: They're proven. The pictures as to how it looked on the 25th are in evidence, of all the material areas.

The Court: This will be received as Defendant's Exhibit Q, but I will say to the jury that the explanation that you have heard and the argument of counsel here is well taken. It is not exactly the same as the landscape was on August 25, 1967, and you should bear in mind that it cannot be relied on as to minor detail, but only as to general orientation of the county.

(The photograph previously identified as Defendant's Exhibit Q was received in evidence.)

(The photograph previously referred to was marked Defendant's Exhibit R for identification.)

Mr. Harrigan: Now, Mr. Sale, I show you Defendant's Exhibit R. What is that?

Mr. Hassan: Well, now I would like to examine that one a little more closely before he testifies from it.

Mr. Harrigan: What is it?

Mr. Hassan: A flat board with a blown-up map on it. Everyone knows that.

The Witness: This is a section of the map that—

page 2218 } Mr. Hassan: I want his testimony stricken.
I want to examine it.

Mr. Harrigan: You don't have to examine it first.

The Court: The motion is denied, but you may examine it. We will suspend at this point until you have.

(Whereupon, a short recess was taken.)

By Mr. Harrigan:

Q. Now, I show you Defendant's Exhibit R. Will you explain what this is?

A. This is a section of Defendant's Exhibit Q and may be described as the area of Exhibit Q which is beneath the letters G F.

Q. Why don't you come down here and we will see if you

Paul Sale

can stick it up and then you can tell us exactly what you are talking about.

A Juror: Your Honor, can there be any orientation of this? Could north be up?

The Court: All right. Gentlemen, would you guide yourself accordingly.

A Juror: Or as close to north as possible.

The Witness: Would you like for me to orient the jury as to those roads?

Mr. Hassan: Just answer his questions. I might object to them.

page 2219 } By Mr. Harrigan:

Q. I think you better turn it around. That is the way the other map is.

Now, would you show the jury where Wilson Boulevard is?

A. This is Seven Corners (indicating).

Q. You will have to stand to the side.

A. This is Seven Corners where Wilson Boulevard begins. Wilson Boulevard comes straight down to this point. This is Clarendon Circle at the end (indicating).

Q. Would you show, on this map, where the shopping center in question is?

A. This is the shopping center at Wilson Boulevard and Liberty Street.

Q. Now, where is Liberty Street in relation to that shopping center?

A. This is Liberty Street (indicating).

Q. Where does that end? Does that dead end into the park?

A. Dead ends at Bonair Park.

Q. What is this section through here (indicating)?

A. This is the Washington and Old Dominion Railroad.

Q. All right. What is this section through here (indicating)?

page 2220 } A. That is also Bonair Park.

Q. Now, Patrick Henry Drive?

A. Patrick Henry Drive (indicating). This is Swanson Junior High School (indicating), and this is Patrick Henry Drive running in this direction (indicating).

Q. Where's Washington Boulevard?

A. Washington Boulevard starts in this corner and likewise comes to Clarendon Circle (indicating).

Q. Now, does this map show Washington Boulevard and Harrison Street?

Paul Sale

A. Yes. Harrison Street, I think, is most readily identified by the right side of St. Ann's Church property. This is St. Ann's Church and so this would be Washington Boulevard and Harrison Street at this point (indicating).

Q. All right. Now, did you blow-up this section (indicating)?

A. I did.

Q. Now, I show you Defendant's Exhibit R. Is that a blown up reproduction of that section?

A. That is correct. This is the section from—you will note this point is this corner (indicating) and it comes down to here (indicating) and coming across, we come to this point and down (indicating).

page 2221 } Q. All right. Now, on this blown up reproduction, would you show us where Nazi Headquarters is on this.

A. I believe it is in this area(indicating).

Q. All right now—

A. I am not familiar with the house, I believe this is the road into that property. This white mark is the road into the headquarters (indicating).

Q. Where's the shopping center?

A. This area here (indicating)

Q. Where is Liberty Street?

A. Liberty Street is the center of the Z (indicating).

Q. Did you bring any stickers?

A. No, sir.

Q. That is this section right here (indicating)?

A. This is Liberty Street (indicating).

Q. Now, at the end of Liberty Street, what is that? Is that a dead end (indicating)?

A. That is a dead end and Bonair Park begins (indicating).

Q. What is this section here?

A. That is the soft ball diamond in Bonair Park (indicating).

Q. All right. And this road here (indicating)?

page 2222 } A. Is Patrick Henry Drive and your pencil is at Swanson Junior High School coming this way (indicating).

Q. What is this road right here (indicating)?

A. Washington Boulevard.

Q. Now, on this map, where's Washington Boulevard and Harrison Street?

A. Well, again, here's St. Ann's Church (indicating) and

Paul Sale

so if you will follow the south side of St. Ann's Church, this is all Harrison Street (indicating).

Q. So it would be this point right here (indicating)?

A. Right.

Q. On this map, is this Washington Boulevard (indicating)?

A. Correct.

Q. Now, is this a true and accurate blown up reproduction of the corner of the map that you just testified to?

A. It is.

Q. I'd like to offer this in evidence, Defendant's Exhibit R.

The Court: It will be received.

Mr. Hassan, do you have an objection to it?

Mr. Hassan: The same objection.

The Court: All right, the objection is overruled and it will be received in evidence.

page 2223 } (The photograph previously identified as Defendant's Exhibit R was received in evidence.)

The Court: Mr. Sale, would you indicate to the jury the direction of north as you now have these maps lying?

The Witness: North is approximately straight down here, Your Honor, (indicating).

The Court: You have south at the top now?

The Witness: That's correct.

The Court: All right.

A Juror: What is the scale of the map of the blowup, approximately?

The Witness: I can only answer the question by saying that from the shopping center, Washington Boulevard and Harrison Street are measured approximately one mile as the crow flies.

Mr. Hassan: Harrison Street and what?

The Witness: Harrison Street and Washington Boulevard.

By Mr. Harrigan:

Q. Now, just so that map is consistent with this one, there is a north marked on this one so what you said, north would be—

A. Straight down (indicating).

page 2224 } Q. Have we got a pencil here? Will you mark north on there?

A. May we use this area (indicating)?

Paul Sale

Q. Yes. All right. Now put in with the same red pencil the shopping center.

The Witness: You want me to label those words?

Q. Yes. Now, would you mark in Liberty Street. Now would you mark in Bonair Park just across in there. Now, put in Wilson Boulevard. Now, Nazi Headquarters.

Now, is there a road visible on there coming out of Nazi Headquarters?

A. Yes.

Q. Just color that in. Now, put in there Patrick Henry Drive. Washington Boulevard. Now, would you draw a circle up around the intersection of Washington Boulevard and Harrison Street and label it.

A. This is going to be difficult.

Q. Just as long as it's visible.

A. I believe that is visible. Shall I label Harrison Street to comply with your last request?

Q. Yes.

All right. Now, would you put the railroad tracks in there?

page 2225 } A. WOD would be satisfactory to everyone?

Q. All right. I think that's the main streets. Does anybody want any other street?

A Juror: Isn't that lower one Washington Boulevard?

The Witness: Yes. I have marked Washington Boulevard right here (indicating), in the Westover Park area.

A Juror: Can you show us where Washington Boulevard runs again?

The Witness: Washington Boulevard is here (indicating).

The Court: Mr. Sale, do you know where 9th and Larrimore Streets are up in there near Liberty Street?

The Witness: It may be helpful to mark those.

The Witness: This is 9th Street here (indicating), I got confused on Larrimore and Livingston. May I refer to your marked map?

A Juror: Where is Arlington Mill Drive on this map?

The Witness: I believe this is Arlington Mill Drive here, sir, (indicating) the street that has the cul-de-sac coming off of it. I don't know the name of the cul-de-sac street. It should be a numbered street though.

The Court: You might as well check the map and label that, too, if you have any questions about where it is.

The Witness: Arlington Mill Drive (indicat-
page 2226 } ing).

Paul Sale

A Juror: Where is Ivanhoe?

The Witness: Oh, you mean Ivanhoe and Washington Boulevard?

A Juror: Yes.

The Witness: All right. I believe this is it. Let me check that. This appears to be Jefferson (indicating). According to that, this is Ivanhoe Street.

A Juror: Your Honor, while we are at it, could we have Inglewood put on there, too?

The Court: All right. Mr. Sale, did you hear that request?

A Juror: Where is Westover?

The Witness: These are Westover apartments in here (indicating). This is the Westover shopping center here. Lexington comes down and curves up into 16th Street. This is Walter Reed School and this is McKinley Road which comes up. This is McKinley School.

Mr. Harrigan: Would you put McKinley Road in there?

The Witness: Yes.

Mr. Harrigan: That runs all the way down to where?

The Witness: McKinley makes a dogleg at this point and it runs all the way to Walter Reed School where it becomes 18th Street (indicating).

page 2227 } The Court: Mr. Harrigan, if you are through with that, let me have it and I will mark it.

Mr. Harrigan: Does this map show where Glebe Road is?

The Witness: The big one? No, sir. It almost reaches Glebe Road. Would you like me to point that out?

Mr. Harrigan: Yes.

The Witness: This is the so called Rosslyn Spur of the Washington and Old Dominion Railroad and it bends down to what is known as Bluemont Drive and then it starts bending toward Washington Boulevard and this is where it just goes off the map (indicating). Glebe Road is just off the map, beside the railroad.

A Juror: So you can see it on the big one?

The Witness: Yes. You can see it on the big one. This is Bluemont Junction where the railroad splits. This is where the railroad goes to Alexandria and this is where the railroad goes to Rosslyn. It comes down here. This is Washington Boulevard and the Washington Old Dominion and this is Glebe Road.

Mr. Harrigan: Mark it in there, would you for me? Do you know where Woodstock Street is? Is it off that map?

The Witness: Woodstock Street, I believe is page 2228 } the alphabetical which becomes Lorcom Lane at

Paul Sale

Lee Highway and Lee Highway is not on this map. No, this map doesn't even get to Glebe Road and 15th Street and Woodstock is a good three-quarters of a mile.

Mr. Hassan: I'm going to object to this. I don't think he is a map maker. He is a photographer. I don't see how he is going to draw us a map that is not on there.

Mr. Harrigan: The only point is it is not on there. It is off there some distance away.

That is all.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Now, you are not really sure about this Nazi Headquarters up here, are you?

A. I don't know where the building is.

Q. Are you sure that is the road?

A. Yes, sir.

Q. Have you ever been on that road?

A. I have seen the road.

Q. Have you ever been on the road?

A. No, I have never turned on to it.

Q. Are you sure that is where the headquarters building is?

page 2229 } A. No. I have labeled that because there was a white area where the red ink can be seen, I am not at all sure where the building is.

Q. Now, the first time you pointed to Harrison and Washington Boulevard, you were up here a block (indicating). You came down here like this (indicating). Now, which one of these two spots, the one you marked or the one you pointed out is it?

Mr. Harrigan: I object. He didn't point out any spots.

Mr. Hassan: He said the outside of the church and he ran his finger down the middle of this property.

The Witness: Now, I am sorry on both maps, I indicated the south end of St. Ann's property and pointed that out.

Mr. Hassan: You said the south side of the church, didn't you, Paul?

The Witness: Well, I was referring to the whole property.

Mr. Hassan: You ran your finger down between the directory and the church.

I have no further questions.

Paul Sale

The Court: Do you have Washington Boulevard and Harrison correctly marked?
page 2230 }

The Witness: I do, Your Honor.

The Court: All right. May the witness be excused?

Mr. Harrigan: Yes.

The Court: Thank you Mr. Sale.

(Witness excused.)

Mr. Hassan: Are you going to have a recess at this time?

The Court: This is a good time for the recess. Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

Mr. Harrigan: May we approach the bench, Your Honor?

* * * * *

Conf.

11/28/67

page 3 } Mr. Harrigan: We have one of three witnesses, one who is sixteen years old, and one who is seventeen. He requested the press not to print his name in the paper. Apparently, it is more a family request.

The Court: I just don't think we can do it.

Mr. Harrigan: Since he is a juvenile.

The Court: He is not charged with anything. He is here as a witness.

Mr. Morris: I think it is more his testifying one way or another which is the issue with the family. They might get called.

The Court: I know you can talk to the reporters yourself. The Supreme Court made it pretty clear that in the Sam Shepard case that the Court cannot ask the press not to print anything. The Court cannot require the press not to print anything.

Mr. Morris: Would the Court ask the press?

The Court: All right. I will ask them.

Mr. Hassan: I am going to object to it.

Mr. Morris: I will tell you why we are asking this. The one is a sixteen-year-old kid in high school. One is seventeen. They have nothing to do with the August 25th episode at all.
Conf. 11/28/67
page 4 }

John F. Hancher

Mr. Hassan: If they're witnesses in this case, they're no different than any other juvenile who testified.

Mr. Morris: No other juvenile made the request. Would the Court do that, not as a requirement, but as a request?

The Court: Now, these are the people you are going to call right now?

Mr. Harrigan: Yes, Your Honor.

The Court: All right. I will just say that counsel relayed to me a request by the young man's family that his name not be printed because he might be embarrassed at school or something like that.

Mr. Morris: That is fine, Your Honor.

* * * * *

The Court: I've been asked by counsel to relay to the representatives of the press here that this next witness is a young man in school and his family requests that his name not be printed or carried in the news media because of the fact that his testimony might cause him some embarrassment in school. I cannot require this of the press. I merely relay to them the request of the family.

Would you call the witness.

page 2231 { Mr. Harrigan: Call Mr. John Hancher.

Whereupon, JOHN F. HANCHER, was called as a witness on behalf of the defendant, and having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. John Floral Hancher.

Q. And your age?

A. Sixteen.

Q. What is your occupation?

A. I am a student.

Q. What school do you go to?

A. Yorktown High School.

Q. Now, Mr. Hancher, calling your attention to on or about November 21, 1967, did you have occasion to be in the vicinity of Old Dominion Shopping Center and Liberty Street?

A. On the 21st of November?

Q. Yes, sir.

John F. Hancher

A. Yes, sir.

Q. Would you come down here to the map, page 2232 } please?

Now, would you point out where the shopping center is on the map?

A. Right here (indicating).

Q. Now, if you could stand, perhaps, over where I am and point, then the whole jury can see.

A. Right about here, right in that area (indicating).

Q. Who were you down there with?

A. Mr. Robert Hunt.

Q. Anyone else?

A. There was another boy with me.

Q. Do you know his name?

A. No, sir.

Q. Was he a friend of yours?

A. No, sir.

Q. Now, would you tell us what you did that day?

A. Well, I started here at the shopping center and ran (indicating)—

Mr. Hassan: Objection, Your Honor. May we approach the bench?

* * * * *

Mr. Hassan: It is immaterial and irrelevant what any track star from Yorktown Junior High School ran this distance in. His testimony is unrelated to the date and it is a planned production which is not related to the event, or in any way resembling it and I object to the testimony.

Mr. Harrigan: Your Honor, we are just showing—

Mr. Hassan: The detective took him up there Conf. and he just said he started to run and right there 11/28/67 is where I stopped him. I am not going to have this page 5 } kind of testimony in this case and I want the objection on the record.

Mr. Harrigan: Our proffer is going to be, Your Honor, that this boy ran from the shopping center, ran down Liberty Street to the park and came up through the park and started walking and walked to North Harrison Street and it took him a certain amount of time. From there on, he continued walking and the only point of this testimony is to show the distance and the time it would take a man, under the conditions which he is going to testify about, to traverse that area. I

John F. Hancher

think that is highly important in this case, how long it does take, and I think it goes to the weight of the testimony, not to the admissibility of his testimony as to how long it took him to get to that area. There's testimony in this case there was a shooting at 11:58, and at some 12:28, Mr. Patler was seen at Washington Boulevard and North Harrison Street, and according to their theory of the case, and he is going to testify as to their theory of the case, going down Liberty Street, going through the park, going by the same bridge that they talked about, on up to Washington Boulevard and Harrison Street. I think it is proper to show the framework of time in which this could be done.

Conf. Mr. Hassan: There's no testimony as to the route 11/28/67 from the finding of the gun to the north side of Ivanhoe Street and Washington Boulevard. There is no route he could have run that could even simulate any testimony that has been put in here. I know of about five different ways to go to that location, one of which would take him three times as long as any of the others.

Mr. Harrigan: You can put in testimony on that.

Mr. Hassan: I am not going to put in any testimony. It is a production that brings nothing to light in the first place. It is a pieced picture.

Mr. Harrigan: He put in about two hundred of them.

The Court: It seems to me general evidence of experiments in an effort to reconstruct the circumstances surrounding the crime are admissible in circumstantial cases, but the point Mr. Hassan is raising can be shown on cross-examination and does go to its weight rather than to its admissibility.

Don't you concede, Mr. Hassan, that generally an experiment may be conducted in order to establish whether the circumstances in a case can probably be duplicated?

Mr. Hassan: A sixteen-year-old track star from a high school is not comparable to the defendant.

Conf. Mr. Morris: On cross-examination he can bring 11/28/67 that out and destroy the whole thing.

page 7 } Mr. Hassan: I think the experiment has to have some reasonableness.

The Court: The objection is overruled.

Mr. Hassan: Exception, if Your Honor please.

* * * * *

By Mr. Harrigan:

Q. Now, Mr. Hancher, tell us how you were dressed?

John F. Hancher

page 2233 } A. I was wearing a pair of long jeans.
Q. What kind of shoes?
A. Tennis shoes.

Q. And a shirt?

A. A sweat shirt with a tee shirt underneath.

Q. What point did you start?

A. Also, I had on a green, old Army jacket.

Q. What point did you start?

A. I started right here at the shopping center, from the Good Will Store.

Q. I see. Would you tell us exactly what you did and how long it took you?

A. I started here (indicating) and I went down to Liberty Street. I ran down Liberty Street until I got to the end of it where I turned right and started going through Bonair Park across the railroad tracks. I crossed the foot-bridge there and went right past another bridge that a car could go over, a truck. Then I went up a small hill and across this part (indicating). I was running all the way and when I got to the edge of this ball diamond, I started walking on Kensington Street.

Q. Just point to the map where you started walking.

A. Right here (indicating).

Q. Right after you got out of Bonair Park?
page 2234 } A. Yes, sir.

Q. All right.

A. I went up this street here toward Washington Boulevard. I turned right and went up Harrison Street, it is right here (indicating).

Q. Look again. Harrison Street is marked.

A. It is right here (indicating). It took me exactly ten minutes to get to there.

Q. It took you ten minutes to get to Washington Boulevard and Harrison Street?

A. Yes, sir. I started walking then and walked down to Frederick Street. I turned left on Frederick Street, went up to 16th.

Q. How long did you walk?

A. I walked for twenty-five minutes total from the shopping center. On 16th Street, I turned right, walked to Glebe Road, it's down here. It's not shown on the map. I turned left on to Glebe Road and walked all the way up to Woodstock Street, and the total time it took me was twenty-five minutes.

John F. Hancher

Q. At the end of twenty-five minutes, how far had you gone?

A. Approximately three miles.

page 2235 } Q. Did you start walking on this place in here and was it a walk all the way to Woodstock and Glebe Road?

A. Yes, sir. I walked from the edge of the ball diamond to Woodstock and Glebe Road.

Q. All right. Now, did you time this on a watch?

A. Yes, sir.

Q. Now, did there come a time when you made another run in that area?

A. Yes, sir. This was last Monday, not yesterday but a week ago.

Mr. Hassan: I am sorry. I can't quite hear when he said it was.

The Witness: It was Monday, a week ago.

By Mr. Harrigan:

Q. December 4th?

A. Yes, sir.

Q. Now, on December 4th, where did you start from?

A. I ran two different routes. The first route I ran, I started here at the shopping center and went to Liberty Street again. I went down Liberty Street to the end of here (indicating). Rather than turning right here (indicating), I went left across the little footbridge right here (indicating). I went up a road to Patrick Henry Drive. That is page 2236 } where I stopped. It took me three minutes to get there. I started walking then. I walked from that point to Washington Boulevard in two minutes.

Q. How long did it take you to get from the shopping center to Washington Boulevard and Patrick Henry Drive, total?

A. Five minutes.

Q. Now, did you continue walking then for another twenty minutes?

A. No, sir, I stopped there.

Q. All right. Now, did there come a time on that same date when you went in another direction?

A. Yes, sir. This time I started at the shopping center. I went down Liberty Street on the right like I did the first time, across the railroad tracks into Bonair Park again. This time I went across the same footbridge I did the first time. Rather than climbing the hill here (indicating), I went across a

John F. Hancher

two-lane bridge right here (indicating) and went through it —into Bonair Park. I went up this road past that building. There's a building right there. I went past that on up to this parking lot here (indicating). That took me five minutes and thirty seconds.

Q. Now, that second route up to Patrick Henry Drive and Washington Boulevard, what was that again?
page 2237 } A. Five minutes.

Q. Right on the nose?

A. Yes, sir, give or take five or ten seconds.

Q. And the first one to Washington Boulevard through the park, walking from the park to Harrison Street was how long?

A. Ten minutes.

Q. Now, that map doesn't show where you wound up on the first one?

A. No, sir.

Q. On the second one you stopped at Patrick Henry and Washington Boulevard?

A. Yes, sir.

Q. That is exactly five minutes?

A. That is correct.

Q. The third one five minutes and thirty seconds? Would you show us where you wound up?

A. At the parking lot here (indicating). This is Lexington Street right here (indicating), I was right here on that corner (indicating).

Q. Would you just put an X where you stopped on your third experiment?

A. Right here, right at the corner of the tennis court on the parking lot (indicating).
page 2238 }

Q. Now, when you were running through that area, did you get anything on your sneakers?

A. Yes, sir. They got quite muddy, I was wearing a pair of white pants. They had mud splashed on them.

Q. Now, that is all. You can go back to the stand.

Do you run track or anything?

A. No, sir.

Q. So you are not a track star?

A. No, sir.

Q. Now, this walking that you said you did from various locations, how would you classify the manner in which you were walking?

A. It was a fast walk, but it wasn't a jog. It was just a fast walk.

John F. Hancher

Q. Just a fast walk?

A. Yes, sir.

Q. That is all.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Now, John, who did you say was with you?

A. I don't remember the boy's name.

page 2239 } Q. Do you remember his last name?

A. No, sir.

Q. Who told you what routes to run?

A. Mr. Robert Hunt.

Q. Mr. Robert Hunt?

A. Yes, sir.

Q. How do you know Mr. Robert Hunt?

A. He asked me to do this for him and a man down at the YMCA called me about it and he asked me to run it for him.

Q. Did he show you just where to go?

A. Yes, sir.

Q. Now, John, did you climb up on the roof and start timing from the roof, in the position of the Econo-Mat?

A. No, sir.

Q. You did not. You didn't climb on the roof. Did you climb down from the roof?

A. No, sir.

Q. Did you climb over a wall and climb back because a dog was chasing you?

A. No, sir.

Q. Did you walk out to a parking lot, look up the parking lot and back and climb up on a trash can and go
page 2240 } over a wall and go between some houses to 9th Street?

A. No, sir.

Q. Now, when you ran down Liberty Street, when you were about half way down, did you go down on the left-hand side and run across the street and look up, walk around a truck and look up again?

A. No, sir, when I went down on the left side, about half way down, I did cross over there.

Q. Did you stop and look twice there?

A. No, sir.

Q. All right. Now when you got down to Larrimore and Liberty Street, did you turn right on Larrimore?

A. No, sir.

John F. Hancher

Q. Did you take your coat off and put it under a bush?

A. No, sir.

Q. Did you go between some houses there on Arlington Mill Drive?

A. Sir?

Q. Did you go between some houses at Larrimore Street and then some houses on Arlington Mill Drive?

A. No, sir.

Q. Now, when you got to this bridge in the park, this wide bridge, did you get down underneath it and kneel
page 2241 } down in six inches of water and put a gun between rocks?

Mr. Harrigan: Your Honor, I object to this. This is the rankest speculation I have ever heard.

The Court: The objection is overruled. The Commonwealth's theory of the case is that the defendant is supposed to have done these things and he is entitled to be cross-examined.

Mr. Harrigan: Someone is being chased and is going to kneel down the river. First, he was half-way up and he got wet, six inches up, he had to get wet somehow.

The Court: He is entitled to cross-examine.

By Mr. Hassan:

Q. You didnt' do any of those things, did you, John?

A. No, sir.

Q. When you left that bridge, how did you go all three times from that bridge?

A. One time I climbed but I ran up a hill across a field.

Q. Have you played in that area, John?

A. No, sir.

Q. Do you know where Silver Canyon is?

A. No, sir.

Q. Do you know where the gulley is with the
page 2242 } caves?

A. No, sir.

Q. Did you climb immediately beyond the bridge to the right? Did you climb up a hill and then go through a steep gulley that had shrubberies and bushes on both sides where they couldn't see you from 10th Street or they couldn't see you from 9th Road?

A. No, sir.
of the park?

Q. Did you go up to Kensington Street before you came out

John F. Hancher

A. I went on to Kensington Avenue. I came out of the park.

Q. Did you go by St. Michael's Church?

A. No, sir.

Q. Did you go over to the north side of Washington Boulevard at Ivanhoe Street?

A. I don't know which side the north side is, sir.

Q. Did you go over on the Lee Highway side, 16th Street side?

A. No, sir.

Q. You didn't cross over from there to the Bonair side at Ivanhoe Street?

A. Across over?

Q. Washington Boulevard?

page 2243 } A. No, sir.

Q. Did you go between two houses at Ivanhoe Street and go over in back of those houses?

A. No, sir.

Q. You have no idea what time it takes to do that?

A. No, sir.

Q. No further questions.

The Court: Any further questions?

Mr. Hassan: I have a couple of questions.

By Mr. Hassan:

Q. Now, you got mud on you. When did you get that, on the 5th of December?

A. On the 4th.

Q. After the snow storm?

A. No, sir.

Q. No, sir?

A. Well, the snow storm was earlier.

Q. Still a little bit of snow and mud around, wasn't there?

A. Yes, sir.

Q. You didn't do this when the leaves were on the trees, when the shrubbery was overhanging the bridge and all of this, did you?

page 2244 } A. No, sir.

Q. You didn't have to go through any shrubbery at all, did you, in the park?

A. No, sir.

Q. No further questions.

The Court: Is there any redirect?

Mr. Harrigan: No redirect.

Christopher P. Rovis

The Court: All right. John, you are excused. Thank you, sir.

(Witness excused.)

Mr. Harrigan: I call Chris Rovis.

Whereupon, CHRISTOPHER P. ROVIS, was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name please.

A. Christopher Patrick Rovis.

Q. Where do you live, Mr. Rovis?

A. 933 North Nottingham in Arlington.

Q. Do you go to school?

page 2245 } A. Yes, sir.

Q. Where?

A. O'Connell High School.

Q. What grade are you in?

A. Eleventh.

Q. Now, did a Mr. Hunt contact you some time ago?

A. Yes, sir.

Q. Now, whereabouts did he contact you?

A. He contacted me at my home.

Q. Now, did you know Mr. Hunt before he contacted you?

A. No, I didn't.

Q. Did you ever meet me before?

Did you ever meet Mr. Morris?

A. No, sir.

Q. Or Mr. Patler?

A. No, sir.

Q. Or Mrs. Lane?

A. No.

Q. Now, was a request made that you do something for Mr. Hunt?

A. Yes, there was.

Q. All right. Now, if you will come down here.

Do you know a John Hancher?

page 2246 } A. I have seen him. You mean that man?

Q. John Hancher.

A. Oh, the boy. I know him, I don't know him very well.

Christopher P. Rovis

Q. Now, will you step to one side and tell the jury just what you did?

A. Well, I was asked by this detective to run this route that the accused slayer had run. I started at the shopping center, at the Good Will Store here (indicating), and I went around on to Livingston Street and made a left on Livingston and went straight down, all the way down to the end of the street and I made a right there (indicating), and around into the park, across the railroad tracks and then I went across the bridge. There was a creek there, across the bridge and then into this wooded area and then I came out into this field, this open field, and ran across all the way across until the street here (indicating), and from the street I started to walk fast, and then I walked around the street here and I came out on to Washington Boulevard here and I walked from Washington Boulevard (indicating). I walked all the way. I walked sort of fast all the way up to Harrison Street, straight up here and at Harrison Street, I clocked it from where I had started at the shopping center to Harrison Street and that took me exactly ten minutes and the
page 2247 } other boy that was with me, he kept on walking for an addition—let's see. He walked for about another five, ten minutes, I'd say and he ended up way over on Glebe Road and Woodstock Street which is a pretty fair distance. He just kept on walking and I didn't run very fast. I ran fast but not real fast and the boy that was with me ran about fifty feet in front of me. That is about it.

Q. What kind of clothes did you have on when you were running?

A. I had blue jeans and a sweat shirt and sneakers.

Q. Were you on the track team running?

A. Yes, sir, I was on it but I quit. I don't run that fast. I am just a normal runner.

Q. That is all. Thank you.

CROSS-EXAMINATION

By Mr. Hassan:

Q. How long have you lived up there in the 900 block of Nottingham Street?

A. I have lived there about a year and half now and before that I lived on Larrimore Street which is pretty near it.

Q. Did you play around Bonair Park when you were younger?

page 2248 } A. Yes, I did.

Christopher P. Rovis

Q. Let me ask you, Chris, what day did you do this cross-country run?

A. I think it was about the 21st of November.

Q. There were no leaves on the bushes in Bonair Park, it didn't look like it does in the summer time, did it?

A. I couldn't tell. It was sort of dark when we ran. It was about 5:30. It was sort of dark. I couldn't almost see where I was going, almost.

Q. Chris, you didn't get up on the roof and start timing from the roof over the launder mat or the beauty shop, did you?

A. No, sir.

Q. You didn't come down off that roof?

A. No.

Q. You didn't climb over that wall where the Burgesses lived where the dog was?

A. No, sir.

Q. And you didn't go out in the parking lot and stop and look up the parking lot towards the bank?

A. No, but I left after the first boy did and I clocked it from that time.

Q. All right. Now, did you go over the wall page 2249 } there at the trash can?

A. No, sir.

Q. You didn't go between any houses? How did you run? You didn't go between the houses on to 9th Street?

A. No, sir. I just ran from the Good Will around to Livingston and then down to the park and then around and out on to Washington Boulevard and up to Harrison Street.

Q. All right. Now, when you went down Liberty Street, which side of the street did you go on?

A. The left-hand side.

Q. Had you crossed over?

A. Yes.

Q. Did you stop and look back twice when you crossed over?

A. I didn't look to the back of me, but I did look in front of me because the boy was running. He was running. You see he was running on the road about the same time I was, so I figured if he got hit, I would get hit, too, because he knew where he was going.

Q. When you got down to Larrimore and Liberty Street, what did you do?

A. When I got to the bottom?

Q. Yes.

Christopher P. Rovis

page 2250 } A. Well, there's a sidewalk there. Really, I had that guide. I had that boy in front of me anyway, so I just followed him. It was sort of like a sidewalk and then we went into this ditch like and up and over this railroad track.

Q. You went straight down Liberty Street?

A. Right.

Q. You didn't go right on to Larrimore Street?

A. No.

Q. You didn't cut between some houses on to Arlington Mill Drive?

A. No.

Q. When you got down to Bonair Park and you got over near Patrick Henry parking area, there is a wide bridge. What did you do when you got there?

A. Well, we waited for a minute because *hd* didn't know what to do, and when I came over and I said, "Let's go across the bridge."

Q. You didn't climb down underneath that bridge and kneel down in the water and put anything between two big rocks?

A. No, sir.

Q. When you said, "Let's go over the bridge," how did you go over the bridge?

page 2251 } A. We walked over the bridge.

Q. From there, how did you go?

A. Then we started running again, not very fast, and we went straight and there is this little hill we went up and then you come to the flat field. This flat field and we went all the way across, and then we hit this street (indicating).

Q. You went into the flat field from the bridge?

A. Right.

Q. You didn't climb up Silver Canyon, did you?

A. What's that?

Q. You don't know what Silver Canyon is?

A. No, sir.

Q. You never did get down and jump off into the sand?

A. I can't remember.

Q. You didn't go up over there and follow that gulley up to Kensington Street where the caves are up on the side there and the tree houses?

A. I don't believe so. I didn't see anything. It was sort of dark. I don't really remember.

Q. So you just went right straight through the apartment area?

A. Yes. No, we didn't go that way. Yes, yes.

Christopher P. Rovis

Q. You went straight up Washington Boulevard?
page 2252 }

A. We went straight up Washington Boulevard.

Q. You didn't go up Kensington and down by St. Michael's Church?

A. No, we didn't go that way.

Q. When you went up Washington Boulevard and Ivanhoe Street, were you on the north side or south side of Washington Boulevard?

A. What do you mean?

Q. Were you on the side towards 16th Street or the side toward Bonair Park?

A. The side toward Bonair Park.

Q. You never did get on the other side and cross back again?

A. No, sir.

Q. Now, at Ivanhoe Street, did you go between two houses, toward Bonair Park.

A. I don't understand what you mean.

Q. Did you get off of Washington Boulevard by going between two houses?

A. No, I just went on that street and made a right on Washington Boulevard.

Q. And yet it took you ten minutes to get from the shopping center to Harrison Street, is that right?

page 2253 } A. That's right.

Q. And it was in November?

A. Yes, sir.

Q. No shrubbery or leaves on the trees, no under growth in the park?

A. I don't know, it was dark out.

Q. You don't know what the park looked like?

A. No, I didn't know what it looked like that—I know what it looks like myself, but not at night.

Q. Well, it didn't look the same in the summer did it?

A. No.

Q. No more questions.

The Court: Any redirect?

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Do you know how much time it took you to get down Liberty Street, itself?

Barbara Cook

A. Down Liberty Street, itself, no, I didn't record it.

Q. How about right up to the park or through the park where you started walking?

A. I'd say it would take us five minutes, but I didn't record it or anything.

Q. Let me ask you if you jumped over any page 2254 } wall to get down Liberty Street? Why didn't you go over the wall?

A. We weren't instructed to.

Q. Okay. Now, you went a longer way than over the wall, didn't you?

A. Yes, we went around the wall.

Q. You went up all the way around these houses, didn't you?

A. Yes, that's right. We went around there and down.

Q. So that is further than going straight over the wall?

A. I guess.

Q. That is all.

The Court: All right, sir. Thank you. You are excused.

(Witness excused.)

The Court: Ladies and gentlemen, at this time, we will recess for lunch. I have been advised that it is sometimes difficult for everybody to get back here in an hour, so we will make it a quarter to two.

Mr. Harrigan: Could we make it 2:00 o'clock, Your Honor.

The Court: We will make it 2:00 o'clock, ladies and gentlemen.

page 2255 } Court will recess until 2:00 o'clock.

(Whereupon, the luncheon recess was taken.)

The Court: Call the jury.

Whereupon, BARBARA COOK, resumed the stand, having been previously sworn, was further examined and testified as follows:

REDIRECT EXAMINATION

By Mr. Morris:

Q. You are Mrs. Cook who testified earlier today?

A. Yes, sir.

Barbara Cook

Q. Mrs. Cook, I show you this and see if you can identify it?

A. Yes, sir, it is a cash-out tape.

Q. Mrs. Cook, look at this tape and tell the Court and the jury how many \$15.00 items you cashed that day.

A. Just one.

Q. What item is that on your tape, from the beginning of your work in the morning?

A. Seven.

Q. That is the seventh check you cashed that morning?

A. Yes, sir.

Q. Now, previously there was some testimony page 2256 } as to bookkeepers coming and getting your work. Explain to the Court and the jury as to whether or not they took any of your cash items.

A. No. They just take deposits. Cashed items have to have a tape before they will pick them up. I run two tapes, one which I keep and one which they take with the work. Other work doesn't have any tapes. They just take it.

Q. Also explain to the Court and the jury, does that tape read from the bottom up or from the top down?

A. It would read from the bottom up. The last item which I ran would have been the first item that I cashed that day.

Q. When you cash a check, you put it face down?

A. You put it face up, but when you take the work out, you run the check up on top which would have been the last one you cashed that day which would make it the first one on the list.

Q. In your work load from 9:00 to Noon, what is the busiest time that you will cash checks?

A. Between 10:00 and 1:00, usually.

Q. Basically, you have most if it around lunch time, don't you?

A. Yes, usually around lunch.

page 2257 } RECROSS EXAMINATION

By Mr. Hassan:

Q. Does that tape include deposit checks?

A. No, sir. We don't run tapes on deposit checks.

Q. You don't run a tape on the deposit checks?

A. No, sir.

Q. Now, were you busy that day at 9:00?

A. I couldn't say. What do you consider busy?

Barbara Cook

Q. Could you have cashed six checks in the first ten minutes?

A. I could have.

Q. Do you know whether you did or not?

A. No, sir.

Q. There is no way of telling, is there?

A. No, sir.

Q. You have cashed that check in the first ten minutes. You could have cashed seven, couldn't you?

A. I could have.

Q. You don't know whether you did or not?

A. No, sir.

Q. You have no idea whether you cashed that check before the coffee break or after the coffee break?

A. No, sir.

page 2258 } Q. It wouldn't be unusual to have seven checks in the first hour, would it?

A. No really unusual.

FURTHER REDIRECT EXAMINATION

By Mr. Morris:

Q. How many checks did you cash that day from 9:00 to 2:00?

A. However many are on the tape. Do you want me to count them? Twenty-three.

Q. When you cash checks, there are other transactions that you handle, also, separate from cashing checks?

A. Yes, the other work that doesn't have tapes on it.

Q. So you have been with the bank for two years. The formal procedure is—

Mr. Hassan: I would object to the formal procedure. We want to know what she did on the 25th.

The Court: Sustained.

Mr. Morris : On a Friday—

Mr. Hassan: I object to a Friday.

Mr. Morris: You don't know what I am going to say. How can you object?

Mr. Hassan: You are just trying to get around that general question again.

page 2259 } Mr. Morris: Would this Friday be different than any other Friday?

Mr. Hassan: Sure, that is why we are here.

Mr. Morris: At your bank?

Barbara Cook

The Witness: Not really.

Mr. Morris: So you say from looking at your tape that the check Number seven was cashed prior to 11:30?

The Witness: I would say it probably was.

Mr. Hassan: But would you say it was cashed prior to 10:15?

The Witness: It could have been.

Mr. Morris: No further questions.

The Court: All right. Mrs. Cook, thank you. You are excused.

(Witness excused.)

Mr. Harrigan: We would like to admit that into evidence, Your Honor.

The Court: Is there an objection?

Mr. Hassan: No objection.

The Court: It will be received marked Defendant's Exhibit S.

(The tape previously referred to was marked page 2260 } Defendant's Exhibit S for identification and received in evidence.)

Mr. Morris: May I show that to the jury, Your Honor?

The Court: All right. Mr. Harrigan?

Mr. Harrigan: Your Honor, I would like to offer in evidence Defendant's Exhibit T for identification which is the United States Weather Bureau report which includes the amount of rain fall on August 24th and 25th and the entire month of August, with the certificate from the United States Department of Commerce with the official signature of the Meteorologist in Charge.

Mr. Hassan: No objection.

The Court: It will be received as Defendant's Exhibit T.

(The document previously referred to was marked Defendant's Exhibit T for identification and received in evidence.)

Mr. Harrigan: Now, with the permission of the Commonwealth, I would like to, sir, call to the attention of the Court and the jury, the total rain fall on the 24th of August, which was 3.47 inches and check the column which indicates on the 24th, from the hours of 1:00 a.m. until 12:00 o'clock that same night, 1:00 a.m. in

Lawrence M. Brown

the morning until 12:00 o'clock, it rained every hour on the hour and the amount of rain fall in each hour.

The Court: Can't you just draw a line.

Mr. Hassan: He doesn't have to draw a line. There's a little box down below that gives the entire thing on the two things. On the 25th, there is .19 inches of rain. It fell on the first hour of the day after Midnight until 1:00 o'clock, the jury can read it. If they need a ruler, we can give them one. The top column of the total 3.47 for the 24th is the amount of rain that fell until 1:00 o'clock in the morning of the 25th.

The Court: Mr. Harrigan, it is going to take a long time for the jurors to make a detailed study of that. Why don't you read into the record those things that you consider appropriate for the present and then let them take it with them to the jury room when they retire to it. I think they might need more time than they can get right here, sitting in the box looking at it.

Mr. Hassan: That is going to take a lot of time, too, because I am sure he is going to miss some of the things I consider appropriate.

page 2262 } The Court: You can read some of the things you consider appropriate, but it is full of entries and it is going to take quite a while.

Mr. Harrigan: The only thing, Your Honor, if they read it now and don't understand it for one reason or another and have some question about it, it could be answered now, whereas they might not have an opportunity to have it answered later on if they review it themselves. I know it's going to take some time.

The Court: Are you ready for your next witness?

Mr. Harrigan: Yes, Your Honor. Mr. Brown.

Whereupon, LAWRENCE M. BROWN, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. Lawrence M. Brown.

Q. What is your occupation, Mr. Brown.

A. I am a commercial representative in the Falls Church for the C & P Telephone Company.

Lawrence M. Brown

page 2263 } Q. Did you bring certain records with you
concerning the phone number of the Nazi Party?

A. I did, sir.

Q. Do you have those records?

A. Yes, I do.

Q. May I see them?

The Court: Are you making just one exhibit?

Mr. Harrigan: Yes, Your Honor.

The Court: That is U.

(The documents previously referred to were marked Defendant's Exhibit U for identification.)

By Mr. Harrigan:

Q. Would you check your records and tell us if any calls were made June 28th to any place, which was the day after the first attempt on Mr. Rockwell?

A. There are five calls on June 28th. Four of these were directly dialed calls from his business line and one was an operator placed call.

Q. What was the first call on that day?

A. Do you want designation and time or—

Q. Time, designation.

A. The first call was to Richmond, Virginia,
page 2264 } at 10:02 p.m. The second call was to Broken-
burg, Virginia.

The Court: How do you spell that?

The Witness: B-r-o-k-e-n-b-u-r-g. This call was at 12:35 p.m.

The Court: Would your 10:02 that you had before be a.m. or p.m.

The Witness: These were both p.m.'s, they were the first and the second.

The third and the fourth calls were both to Dallas, Texas. The first call at 7:03 a.m. and the second call to Dallas, Texas, at 9:09 a.m. All four of these first four were directly dialed calls. The fifth call on the 28th was to New York City. Being an operated placed call, there was no time on the statement.

By Mr. Harrigan:

Q. Now, this call to Richmond on June 28th, what was the telephone number that they called?

Lawrence M. Brown

A. The Virginia area code was 703, telephone number 644-1041.

Q. Do you know who that phone belongs to down there?

A. No, sir, I don't.

Q. From 6-28 up until August 25, were there any other calls to Richmond?

page 2265 } A. There was a call on July 12th to Richmond. This was a directly dialed call at 3:07 p.m. Do you care for the phone number on that one?

Q. Yes.

A. Area 703-232-7831.

Q. Now on August 25th—

Mr. Hassan: He hasn't finished the question yet. He has only examined as far as July 12th. Let's hear him finish his examination.

Mr. Harrigan: All right.

The Witness: A call on July 11th, Richmond, Virginia, area 703-644-1041, 4:14 p.m.

Three calls to Richmond on July 22nd, all directly dialed calls. First call area 703-644-1041 at 7:55 p.m. The second and third calls both to the same number, area 703-644-6345. The first call at 7:53 p.m., the second call at 7:54 p.m.

By Mr. Harrigan:

Q. Was there one at 7:55?

A. 7:53 p.m., 7:54 p.m. Yes, 7:55 p.m. It's to a different number.

And July 23rd, directly dialed call to Richmond, Virginia, area 703-644-1041. Call placed at 11:50 a.m.

page 2266 } Directly dialed call on July 26th to Richmond, area 703-644-1041, 4:53 p.m.

A call on August the 22nd, directly dialed call to Richmond, area 703-644-1041 at 5:05 p.m. That is the last call up until the 25th.

Q. Now, on August 25th, how many calls were made?

A. Thirteen calls.

Q. All long distance?

A. Yes, sir.

Q. Do you have a call to Richmond on that day?

A. Yes, I do. This was a directly dialed call to area 703-644-1041. The time of the call was 12:59 p.m.

Q. Is that the only call to Richmond?

A. Yes, sir.

Q. Do you have a call to Fredericksburg?

Lawrence M. Brown

A. On the 25th?

Q. Yes.

A. Two calls to Fredericksburg, both directly dialed, both the same number, area 703-371-1872. The first call at 12:45 p.m. The second call at 8:18 p.m.

Q. In the evening?

A. Yes.

Q. Now, other than those two, you say there were eleven more on the 25th. I am not so interested in page 2267 } where they went to.

A. Then more, we have got a call to Richmond and two to Fredericksburg.

Q. That is all.

CROSS-EXAMINATION

By Mr. Hassan:

Q. I notice that on the 25th there were some ink marks on your recording. Do you know who put those there?

A. Yes, sir, I do, for reference.

Q. Did anybody designate those two places to make the circle? Weren't two circles on the top page of one of those sheets?

A. No, sir. You are not referring to that, are you (indicating)?

Q. No, not that one. I am going to ask you about that one. These underlined ones here (indicating).

A. These are my checks here (indicating), here (indicating), and those two checks (indicating), but I didn't see any circles on any of these.

Q. Just this heavy line and then this check mark (indicating)?

A. That's right.

Q. No further questions.

page 2268 } REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Are those copies of the records?

A. They are originals.

Q. Do you have copies?

A. No, sir.

Q. I'd like to introduce them into evidence, Your Honor, but if they are original copies—

Lawrence M. Brown

The Court: You can have copies made and return the originals.

Mr. Hassan: The questions have only applied to not more than four pages and there's a tremendous amount of pages that he hasn't even mentioned. There's two dates and I'm going to object to his putting anything in there except those which are really pertinent to the case. He indicates only two dates. That is a minor copy job.

Mrs. Lane: I'd like to see them at least, Your Honor. There is one I want to look at.

Mr. Harrigan: Go get it.

The Court: You don't all contend that all those dates are relevant, do you?

Mr. Harrigan: They are relevant to some extent, Your Honor, to show an absence of contact.

page 2269 } Mr. Morris: What we are considering, Your Honor, is whether or not we could have photostatic copies made of these and let the telephone people keep their originals.

The Court: You can certainly do that but the question is admissibility of that entire group. Do you object to all of those, Mr. Hassan, or just those to which reference has been made in the testimony.

Mr. Hassan: I object to this idea that they might indicate an absence. It just indicates an absence of telephone numbers and not individuals in the first place, which is extremely remote and I object to this whole business going in except that which there might be some relevancy and the specific questions to two dates and I won't object to those two dates, but this long random of who called a Richmond number, we don't know anything about, even who owned the number and I would object to that. I don't care about the 28th. There's only four numbers and I don't care about the 25. There's only thirteen.

The Court: When Mrs. Lane is through examining those, I will see you gentlemen at the bench.

* * * * *

The Court: What is the relevancy of all this?

Mr. Harrigan: I don't object to striking out the other numbers. I don't think they have any relevancy.

The Court: You mean the dates?

Mr. Harrigan: The other dates.

The Court: So you would then offer only the—

Lawrence M. Brown

Mr. Hassan: The 28th of June and the 25th.

Mr. Harrigan: Right. All from here to Richmond, presumably.

Mr. Morris: The other relevancy, Your Honor, as you recall, Matt Koehl's testimony that he only made about three calls that day and thirteen showed up.

The Court: I don't know if that is competent to prove anything because others would have made calls beside Matt Koehl.

Mr. Morris: That would be the only inference. Conf. He was in command and would call the other ex-11/28/67 changes.

page 8 } Mrs. Lane: Also, Mrs. Lloyd wasn't sure if he got a call from there or from Harrisonburg.

The Court: I will let it go in for whatever its weight might be. You are not concerned with the intervening dates, then between the 23rd of June—

Mr. Harrigan: No.

Mrs. Lane: —and the 27th.

* * * * *

Mr. Hassan: I would still like to do more cross-examination.

page 2270 } The Court: I understand then that counsel moves the introduction in evidence only of these records relating to the 28th of June and the 25th of August, is that correct?

Mr. Harrigan: That's correct.

The Court: They will be received in evidence with leave to substitute the photostatic copies and return the originals to the telephone company.

Mr. Hassan: May I proceed?

The Court: Go ahead.

RECROSS EXAMINATION

By Mr. Hassan:

Q. Of those thirteen calls on the 25th of August, how many of them were made out of this phone number as a direct dialed call?

A. Eight of the calls were directly dialed, two others were operator placed, and from this ticket you could not tell whether it was from the home or could be billed to the home, but in answer to your question, eight of them were.

Lawrence M. Brown

Q. This is the 25th of August?

A. Right, sir.

Q. How many of them were collect calls, received at that number?

A. Three calls.

page 2271 } Q. Would you have a record of any calls that were made from that number on a credit card of some other number?

A. If they were made from that house?

Q. From that house. Supposing Mr. Harrigan had my credit card and used that phone on that date to call Mr. Morris and charge it to my office phone. Would it show on that record?

A. No, sir, it would not.

Q. So that is by no means a record of all phone calls that were of a long distance nature from that telephone number on that day?

A. No, sir.

Q. No further questions.

FURTHER REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Do you have a record of any calls from Richmond to that number on that day?

A. A direct call from Richmond?

Q. Or any other type. You wouldn't have any record of anything else, would you?

A. No, sir.

Q. That is all.

page 2272 } The Court: All right, sir. If you will leave those, I will ask the Clerk to see that you get them back. Thank you.

(Witness excused.)

The record of calls relating to the 28th of June will be marked Defendant's Exhibit U1 and there are three sets relating to calls on the 25th of August and they will be U2, U3, and U4, respectively.

(The document previously identified as Defendant's Exhibit

Francis Joseph Smith, Jr.

U, were received in evidence as Defendant's Exhibit U1, U2, U3, and U4.)

The Court: Next witness.

Mr. Harrigan: Frank Smith.

The Sheriff: There's no Frank Smith, Your Honor.

Mr. Morris: Your Honor, he's the husband of the lady who was on yesterday and who is pregnant. I think he was sitting in the office. May I call him?

The Court: Yes, sir.

Mr. Hassan: May we have a five-minute recess while he does that?

The Court: Take a five-minute recess.

(Whereupon, a short recess was taken.)

page 2273 } The Court: Call the jury, please.
Mr. Harrigan.
Mr. Harrigan: Frank Smith.

Whereupon, FRANCIS JOSEPH SMITH, JR., was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. Francis Joseph Smith, Jr.

Q. Now, Mr. Smith, you are wearing sun glasses. Would you explain to the jury why you have those on.

A. Well, I have a loss of vision in the right eye, and approximately three years ago, I underwent surgery in the left eye, and since that time these glasses here, they cut down on the glare from the lights and therefore, they sort of rest the eyes in a light stronger like this.

Q. In one eye you can't see out of at all?

A. The right eye.

Q. Now, calling your attention to on or about August of 1965, did you have occasion to come to Virginia?

A. I did.

page 2274 } Q. Where do you live?

A. I live in Ellsworth Falls, Maine.

Q. Now, on or about that date, what was your occasion to come to Virginia?

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A. Well, the day that Commander Rockwell was shot, my wife was preparing a meal for the two of us.

Q. Now, August of '65, I am referring to.

A. To come to Virginia, August of '65?

Q. That's correct.

A. Oh, I came in '65, I came down about the middle of September. The middle of September, Colonel Welch came to Maine to drive me down to take part in the election *campaign* of Commander Rockwell. He drove me down to Arlington, Virginia, where I stayed at the barracks. The reason that I came down at that time was to put my car at the disposal of the party for use during the election campaign.

Q. Is that the "Rockwell for Governor" campaign?

A. "Rockwell for Governor" that's right.

Q. Did you have occasion to go to Richmond any time after that?

A. Shortly after my arrival, Colonel Welch drove me down to a building down there that was hired as the headquarters in Richmond, Virginia. We brought down a lot
page 2275 } of "Rockwell for Governor" pamphlets for distribution, stacks of them. We loaded the back of the car and at that time, I helped carry those pamphlets into the building and we left them there for whatever use they were going to be put to.

Q. Now, who was down there that you saw when you arrived down there?

A. That is where I met my present wife, Claudia.

Q. Her name is Claudia?

A. That's right.

Q. And she was working there at the time?

A. She was working as a secretary.

Q. When you were around the headquarters down there, did you have occasion to see any guns?

A. Well, yes, because when I came, after I had put the papers and carried the stuff in and I saw this girl sitting at the desk there, in front of her right on the desk, which attracted my attention immediately, a nice looking young girl and there was this enormous looking weapon right on top of the desk in front of her. Now, this weapon attracted my attention for two reasons. Being up in mind and through a period of years, many people they have often mentioned that they'd like to use a hand gun for hunting deer and the length of the barrel on this weapon immediately attracted my attention, so I went over and picked up the weapon.

page 2276 } Q. Now, I show you Commonwealth's Exhibit 44A. Would you look at that.

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A. I have looked at it.

Q. Have you ever seen that before?

A. I saw a weapon that looked exactly like that lying on the desk in front of Claudia.

Q. Whose weapon was that?

A. Well, the fact that she was a pretty young girl and I wanted to have a conversation, when I picked up the weapon, it was something that I could start a conversation with. I picked it up and I said, "This looks like a good weapon." I said, "How old is this." No, I didn't ask how old it was and I said "Whose gun was this." She looked at me and smiled and says, "It belongs to Captain Lloyd."

Q. Now, did you stay in Richmond for any period of time with the campaign?

A. Stay in Richmond, I stayed over one night, but I was down there that day and we returned and then at a later time, I came down again and this was for a television—taping of a television show and I am almost certain it was in Roanoke, Virginia.

Q. Who was this Colonel Welch you keep referring to?

A. At the time Colonel Welch, he was the page 2277 } Deputy Commander to Commander Rockwell and he was the one that when I put my car at the disposal of the party and I asked for a reliable driver and he said he would do most of the driving with the car so that everybody wouldn't be using the car and the chances of smashing it up would be less.

Q. Now, did you ever see Mr. Lloyd down there?

A. I saw Mr. Lloyd down there. I couldn't tell you the exact number of occasions, but I did see him. One night I even stayed at his father's home.

Q. While you were down there, didn't Mr. Rockwell and Mr. Lloyd have any problems?

A. Yes. There were definitely problems. On the first time, the problems were concerning a rally. One time we couldn't find a site of the rally that Mr. Lloyd had supposedly set up for the rally. We couldn't even find the field or the place. It was only fortunate that by driving into a farmer's yard, we located the site of this rally.

Another time we had a booth at the fair with the various people running for governor, the Republicans and the Democrats and the "Rockwell for Governor." Each had a booth at the fair and there had been some trouble about evicting the "Rockwell for Governor" booth so the Commander decided to stay there one night rather than have the be-

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page 2278 } longings and the things in the booth put outside of the building and put right out into the fair grounds. The night he decided to stay there, I stayed in the booth overnight with Commander Rockwell. We stayed the night and we were supposed to be relieved in the morning with Captain Lloyd. After spending the night with very little sleep, it was cold and everything, a miserable night, we waited and waited for Captain Lloyd to show up. At this time Commander Rockwell was very upset, "Where is Lloyd? Where is Captain Lloyd? He is supposed to show up. How come he leaves me here?" and this sort of thing. We waited there for a good number of hours, more than we should have.

While we were waiting, there was an elderly man, Mr. Niles. He brought us some coffee and we continued to wait and finally Captain Lloyd did show up.

What had happened, he had been off somewhere with the other secretary to the party. It seems he had formed an attachment for this girl, the girl he later married, but it seemed that all through this campaign what had happened was Captain Lloyd was not paying attention to his duties. He had become infatuated with this girl and he neglected his duties and throughout the election campaign, more and more this became noticeable and people were becoming irritated, especially the Commander, Colonel Welch and a
page 2279 } few of the other officers because the election was very important to them at the time.

Q. Now, how soon after this particular campaign did Mr. Lloyd leave the party, if you know?

A. Well, I didn't find out definitely he was dismissed from the party until after the definite—I had heard, but the definite information was when I came down in March of the following year.

I had come down. The Commander issued a call for us to attend our rally to support our boys in Vietnam and Washington, and at that time we came down to attend that rally. Captain Lloyd was no longer—he wasn't present at the rally. He was no longer with the party and we were told by various people it was common knowledge that Captain Lloyd had been dismissed.

It was definitely told to me on the way down to Spotsylvania. I went down with Colonel Welch, my wife and I, and we drove Captain John Patler and a Lieutenant Draeger down to Spotsylvania to a camp down there and at that time, there was some discussion as to what Lloyd was doing since his dismissal from the party, and on the way back, Colonel

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Welch, he made—well I didn't approve of the remark, but he made this remark. He said how he had to dis-
page 2280 } miss Captain Lloyd from the party because of
what happened within the campaign and the
negligence of duties and so on and the infatuation that Cap-
tain Lloyd had for Elaine and then said, well sarcastically,
he said, "Captain Lloyd calls her flower. I call her weed,"
and at that time it put me in a little funny position because
here I had more or less, you might say, become an admirer
of the other secretary so it didn't sit well with me. Captain
Lloyd had one secretary. I had the other one so that didn't sit
too well with me, the fact that Captain Lloyd was dismissed
at the time. I wasn't any trooper and I wasn't too active in
the party at the time so I didn't make any comment, but I did
capture the other secretary.

Q. Did you ever make any comment to Major Koehl when
the subject of Lloyd's dismissal was brought up?

A. Definitely, on two occasions. In May there was a motor-
cycle ride from Tokesbury, Massachusetts, which I helped to
organize. When the Captain came up, he brought along with
him Major Koehl; Captain John Patler; I think Luttmann was
made a Lieutenant at the time. I'm not sure whether he re-
ceived that promotion; the elderly Mr. Niles. Let me see, I
think that was about—I think that was the extent of it.

Q. You keep talking about the "elderly Mr. Niles"?

A. Well, there is confusion.

page 2281 } Q. Is that the same Niles as Douglas Niles?

A. No, that is why I say, "elderly." That is
the only way we could distinguish them. They're both called
Frank Niles, but the younger one's real name is Douglas
Niles. We refer to Niles—one would be young Niles and the
other would be old Niles. I refer to elderly Mr. Niles. Young
Niles didn't come along with us, but the ride from Tokes-
bury, to Maine, was a memorial dedication and we wanted to
make a dedication in Maine, which was his home state before
we went on a ride. We went on a ride in Boston. I took the
whole group of them. We went and had something to eat and
then we went over to a friend of mine's house. This friend
of mine was Steven Hughes. At his home there, we were all
grouped around, and there again, my wife, Claudia, naturally
we asked about new members of the party and we asked Kirk
Meeple who had left the party and especially my wife. He
likes Elaine. I think they came from Texas together so she
asked about Elaine and Captain Lloyd and we were informed
on that ride in the presence of Major Koehl that Captain

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Lloyd was running his father's boarding house, was running a boarding house and that was on the memorial day ride.

Now the second occasion which took place, this is November of '66, November of '66 I think is the date.
page 2282 } The actual date I can't tell you exactly, but I can give you this information.

Commander Rockwell had called me to come down to Providence. He was going to make a speech at his home, at the university, Brown University, the school he had attended when he enlisted in the Navy and at that time, he called me down because he feared an attack upon his life. So he had with him at that time Major Koehl and a Lieutenant Ealy. He called me down. He said that he would probably need my help in case anything did take place. At that time Commander Rockwell had with him Commander Koehl, Lieutenant Ealy, and Captain John Patler. I arrived there. We went to this house. The shades were all down and the Commander's Aunt Madge, she was a nice lady, and the small house and small rooms and socializing, we were talking all in the parlor.

Once again the subject of Captain Lloyd and Elaine came up and of course at this time we inquired about Colonel Welch. I had learned previously that Colonel Welch had left the party and, of course, we inquired again what is he doing, where is he working, what is Captain Lloyd doing, and where is he working and at that time were any of them thinking of coming back in the party, and were they doing any party work, and at this time, we were told that neither Captain Lloyd or Colonel Welch were taking part in
page 2283 } any party activities or doing any work and that they were out of the party. So this conversation took place in the presence of Major Koehl and Captain Patler, my wife and I, plus two people that I had brought down to Maine with me.

When the Commander told me that he feared an attack, I brought along a big strapping fellow, six feet two. He was in the corner and in the service, and he brought his wife along. At the time, Robert Hamilton, myself, and Captain Patler, we were on the stage behind the Commander as protection in case the attack took place within the hall while he was speaking, and then later on, we had to leave. I left with Captain John Patler. When we left with the Commander, we left through the tunnel after the speech was over to go to the car, leaving with us because the Commander was very concerned about this. He said he had been told that he was apt to be attacked with the speech.

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Q. All right now. Do you consider yourself a good friend of Commander Rockwell?

A. I would say this, that I was probably the closest friend that Commander Rockwell had.

Q. Were you in the company of Rockwell and Patler on many occasions in '65 and '66?

A. '65 and '66, several occasions.

page 2284 } Q. What was the relationship between Patler and Rockwell?

A. The relationship—it's hard to convey to an average person how this relationship worked. Here we had two men out of an artistic temperament and, both I would say, with exceptional ability, and both in more or less the same line. Commander Rockwell had been in the publishing business. John Patler had been a publisher, a printer. They were both artists and every time that anything of importance had to take place, I would go along in the capacity with the Commander, more or less as added security, but in this case, just like down on the Brown University speech, the Commander entrusted the whole security to John Patler and during that conversation, they were at one time engaged in a good debate as to how they would leave the building and how they would conduct themselves, and the Commander said to John, "Please, John," he says, "I can't discuss these details. I have to concentrate on my speech. I am going to leave it all up to you." John Patler said, "Yes, sir." He wants out, he arranged the security precautions and at that time the Commander put what he feared to be an attack on his life into John Patler's hands.

When John Patler came back to me, he told me the arrangements that had been made. The Commander accepted them and I went along with them. Each time that they
page 2285 } would have a problem, for example, I can tell you, in the fair booth. John Patler, he had decided the fair booth after it was over, he laid out these elaborate plans, changes to be made, so he discussed it with the Commander in my presence. Why did they cut down on this. Why did they change that. The Commander always had administrative problems. John would design one thing and somebody would make changes. Naturally, John would say, "Why," and these discussions took place all the time, but they were only administrative discussions and sometimes they would argue a point, but all the time there was never what I would say any feeling of hostility because I can say this in this Courtroom in all sincerity, that probably I think that the Commander thought as much of Lloyd as he thought of

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anybody, but he also thought as much as John Patler. They were the two closest people within the party which you called the troopers. They were very close. John Patler, I can almost say, was like a son to him, but administrative difficulties did arise, but there was never any feeling of what you would call an outright hostility. As a matter of fact, the Commander, a couple of times spoke to me a little bit. He had to straighten me out a couple of times.

Q. Now, did you become aware that Patler
page 2286 } was leaving the party?

A. Yes. It came as a surprise because at that time I had a conversation with John and the last time I think I spoke to John, I recall there was a little bit of bitterness in the conversation. My wife and I had come down to help the Commander sometime before Christmas of '66. This was Christmas of '66. We stayed at the headquarters up there until after New Year of '67. My wife did all the typing, not all of it but a good portion of the typing for the Commander. He was writing his new—his latest book so she had to be typing day in and day out and nights, all kinds of passages.

Then one evening in the room the Commander told me, he said, "You know," he said, "I am losing John in the Spring." I said, "What is the matter?" He said, "John is leaving the party in the Spring." Well, we went downstairs and John came in and I didn't engage in a conversation at that time because the Commander brought down several pieces of this manuscript. He gave it to John and he said, "Tell me what you think of it." John read it, laughed, made a few remarks in a couple of places. The Commander comes down. John made a few suggestions and changes. The Commander gave him more pages. John continued to study the manuscript, went down and discussed a couple of passages. Then the Commander took the papers upstairs. He came down
page 2287 } twice and left. We went upstairs and then I looked at John and I said, "John, the Commander tells me you are leaving the party. Is this true?" John said, "That's right." I said, "You are leaving in the Spring?" He said, "Yes." I said, "Well, why?" He said, "Well," he said, "I am going to leave it." He says, "Because I am going to take care of family responsibility." Well, I said, "John, do you recall that Captain Lloyd did the very same thing, you were very bitter against Captain Lloyd for leaving the party?" I said, "You were very bitter. You despised him." I said, "Now, how come, here's a situation where you have a choice concern-

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ing your family, that you are going to do the very same thing." Well, the only answer he gave me was the fact that he said that, "It affects me, personally. I am looking at things in a different light." I said, "John, I don't think that is right. Can't you continue to work in the publications with the artist work?" He said, "No, if I leave the party, I will lose my rank and I will encounter all kinds of difficulty. You are familiar with the press and the supplies and I will encounter many difficulties, so the best thing for me is to separate cleanly from the party and just take care of the family." I said, "John, I don't think it is fair. If you were sincere in anything you ever told me about fighting to continue
page 2288 } for our race and our people here in this county, at least you will make some endeavor to continue your work. He said, "Frank, I have thought it all over thoroughly and I don't see how I can continue working for the party and doing the things I have planned concerning my family."

Before this developed into an argument, Claudia had asked a few questions along the same line and I started to raise my voice a little, and John was getting a little hot under the collar and he was a little impatient. I stopped the subject before an argument developed. John went upstairs and shortly after that, Chris Bailey came and stopped for John. John went upstairs and called for Chris Bailey. They went on a motorcycle. I assume it was a *motorcycle* because I heard the motorcycle leave. That is the last time I spoke to John Patler.

Q. Did you have occasion to come down here in July of '67?

A. July of '67? Oh, yes, I came down here. I received a phone call in July of '67. The exact date I don't know which, but I can say that Commander Rockwell called me and he probably did not call me collect. Sometimes I have received calls from Arlington collect, but this time he did not call me collect. He called me in the afternoon. Ac-
page 2289 } tually, my wife answered the phone and for some reason, she didn't recognize his voice at first and it was the Commander on the phone. The Commander, he spoke to me and he told me, he said, "You know that a shot was fired at me," and I said, "Yes, I know all about it." I laughed and I said, "I think you fired a shot yourself, a little publicity," and he said, "No, no, Frank. I am very serious about that. I want to talk to you about that." And he said, "Incidentally, did you get my radio?" Now, this radio—I had received a radio some time earlier and I put it away. I

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thought perhaps for some reason the Commander might want me to store this radio because when he was home in March, he had the same type of radio, so I said this is the Commander's radio and I set it aside, and I said, "Don't worry." I said, "It's all put away. It's safe." He said, "What do you mean? I sent you a brand new radio," and I could hardly believe it. The Commander said, "You got the radio as a gift," and I said, "Yes." He said, "I want to talk to you. It's a very serious matter." I said, "Well," he said, "I want to talk to you down here in Arlington." He said, "Come down as soon as you can," and I said, "Well, if I come down, can you arrange for sleeping quarters at the barracks?" He said, "No, I don't want you to come to the barracks. I want to arrange a meeting with you. I want to talk to you privately." Well, I said, "Off hand, the only place that I can think of is where I used to go drink an occasional beer at the La Boheme, down at the shopping center." We arranged for him to meet me at the La Boheme. We made an appointment at 1:00 o'clock. The date has escaped me. The date of this meeting has escaped me. I can't recall it, but I can get very close to it if the phone bill from the Commander, if it is on the phone record. He did not call me collect, so there's a good possibility it is on the phone record unless he called me from out of town. That is the only thing I can tell you.

I came down here. I made provisions for my cats. One cat had been hurt and had operations, and this was the cat I was worried about. So we left food and everything and made provisions for the kitten. We left the kitten in the house with a good supply of meat and food and milk.

We took off and my wife and I stopped at my sister's house and rested and came down to Arlington and arrived here at Noontime. This was a little early for our appointment, and stopped at Tops or one of those Hot Shoppe restaurants you have and had a cup of coffee and went at the La Boheme Restaurant and I met the Commander there.

He came in and had a bite to eat. My wife and I had appeared. He told me at that time. "I was fired at. There was an attempt on my life." He said, "I am very disturbed about this." He said, "Because there was an obstruction in the road which indicates to me that somebody knew exactly what time I would return." I said, "Yes," I said, "Well, this sounds like a good possibility." He said, "I strongly suspect treachery in someone very close to me." I said, "All right." I said, "Did you

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see the man who shot at you?" He said, "I saw the man shoot." I said, "Did you get a look at him?" He said, "Only from the rear." I said, "Well, let me ask you, was it any of this white power?" Whatever party they have down here. They are former members that used to be with the Commander. I said, "Was it any of those people?" and he said, "No." Then I asked him particularly if it was Captain Lloyd. I mentioned the name Colonel Welch and John Patler and mentioned the names Niles and for some reason, I overlooked Luttmann, who also left the party. I asked them individually from these people. "Frank," he said, "If it had been anyone with me through the years, I'm almost certain I would have recognized them, even though it was through the back." I said, "What did you call me all the way down here for?" So he asked me, he said, "Frank, if anything happens to me, I want to ask you specifically to look into this." page 2292} This is when he mentioned the part about treachery. "I suspect treachery from someone very close to me." I said, "Well, tell me who you suspect," and he looked at me and said, "Frank, I don't dare mention my suspicions because if I am wrong, it could do irreparable harm to the party." Actually, I think he said the word "damage" but I said, "If you don't mention your suspicions to me," I said, "You don't leave me very much to go on." He said, "That is the best." But he said, "I strongly suspect this attempt here because it was so definitely upon my life that something could happen to me in the future." I said, "The best I can do is if something does happen—but Commander, I said, just between you and I, you fired the shot at yourself." And I ordered another beer.

The only thing that half convinced me that he was sincere was the fact that he took me all the way down from Maine on a long trip and that he would not let me go up to the barracks. That is the only thing. Other than that, I was still half convinced that was a publicity stunt. The only thing, as I said, he would not let me go to the barracks. He called me all the way down from Maine, so therefore, I would say fifty or sixty per cent, I believed him, but there have been some activities over the years and so much happening for publicity purposes that I did have a doubt at the time.

page 2293} Mr. Hassan: Could we suspend for our recess now?

The Court: Are you anywhere near your motion?

Mr. Harrigan: No, I will be a little while.

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The Court: All right. Members of the jury, I promised counsel to recess at this time of the day. They have got things they have got to tend to, so would you please retire. The Court will take a short recess.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

Whereupon, FRANCIS JOSEPH SMITH, JR. resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Harrigan:

Q. So, that puts us to July of 1967, is that right?

A. Yes, sir.

Q. Now, that was in reference to your meeting that took place at La Boheme with Commander Rockwell?

A. That's right, sir.

Q. Now, after that meeting, where did you go then?

A. I went back to Maine.

Q. Did you come down again from that time
page 2294 } until August, 1967?

A. Yes, when I came down in August after the Commander was shot.

Q. That is what I mean. Prior to him being shot, were you down there between July and—

A. No, no. I didn't come down until I received the information that the Commander had been shot.

Q. Did there come a time that you received information that Rockwell had been shot?

A. Yes. I was at home and my wife was getting something to eat when Dick Carlyle came to the house. He is in the construction business and he is an auxiliary policeman and he stopped by my house sometime a little after noon, and he came to the door and he said, "Frank, Commander Rockwell has been shot. He's been killed." He said, "It's on the news, why don't you turn on your TV?" So I did. I turned on the TV and in a short period of time anyway, I got the news report and there was a report that Commander Rockwell had been slain, so right after that I called up the barracks and talked to the trooper that was on duty there. I can't swear to who was on duty, but I think the voice was Parsons and I

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asked him, I said, "Was Commander Rockwell slain?" then he said something about the suspect having been arrested. "Do you know who it is?" He said, "No." It was true he had been shot but he didn't know who the suspect was. I said, "Well," I said, "Is Barbara there?" and he said, "No." I said, "Well, is she working?" "Yes," I said, "When Barbara comes home, will you have her call me home?" I know that Barbara gets home from work usually around 7:00 o'clock. Around 7:00, I was expecting a call and I didn't get a call until much later that evening. Barbara called and she called me collect.

Q. Who is Barbara?

A. Barbara von Goetz. She is the Commander's secretary. She called me at my home and called me collect. At this time I knew that John Patler had been arrested. When I asked Barbara what information she had, she said she didn't know much of anything. All she got were the reports, the same news that I had been getting and then she asked me, she said, "Do you know anything about the funeral arrangements, Frank?" And I said, "Well, Barbara, not really, not truly," and she said, "Well, that's all right. Captain Lloyd has taken care of things for now." I said, "When is he to be buried?" She said, "I don't know." She didn't know. She said, "I will call you back again tomorrow," so she called me back again the following day, called me again collect and she gave me a tentative date for the funeral. So I asked Barbara over the phone to purchase a wreath of flowers for me and I said I would reimburse her. She purchased a wreath of flowers and I do not know whether she told me on a third phone call or whether it was when I was down for the funeral, but she did tell me that the flowers cost \$35.00 and she had purchased a beautiful wreath. Now, whether she called me a third time, I don't recall, but I know I did come down.

She gave me a date for the funeral and I came down a day or so earlier, earlier than I had intended so that I wanted to get down there earlier thinking that *possibly* he might be buried a little bit sooner than she mentioned. So I came down for the funeral and my intentions at that time were to see the Commander for the last time.

When I arrived down there, I found that it was a closed coffin, that I would be unable to see him. I found out that they had planned these elaborate rites for his burial. I decided not to attend the funeral. I didn't want to participate in any of these burials of that sort. I didn't think, I, myself,

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personally didn't think that he wanted it. Of course, that is only my opinion. He had told me—

Q. What elaborate rites?

A. Well they wanted to bury him with what
page 2297 } they called a Nazi funeral, and salute, and full uniform. Now, the Commander had told me that his one desire, in a conversation in the past, he always said, whereas he had been in two wars, the Second World War and the Korean War, that he would like to be buried in Arlington Cemetery. I think that is the name of it, in Arlington Cemetery and now this funeral was to take place in Culpeper. Well, I decided not to attend so the morning of the funeral, I stayed in bed. I slept a little late and I received a phone call that came sometime during the day, probably Noon or in the early part of the afternoon and the phone call came from Culpeper and said that I was staying at the home of the young Niles, Douglas Niles. I had a choice of staying at two homes, Douglas Niles, or J. V. Morgan's, but I stayed at Douglas Niles. We knew them. So the phone call came from Douglas Niles' wife. She had gone to the funeral and said her husband had been arrested in some sort of a demonstration.

Well, I immediately told my wife, Claudia, that we have got to go to Culpeper, so I told her we would be down there. Well, I had no idea that Culpeper—I thought Culpeper was somewhere around the corner. I found out it was a drive of at least a couple of hours. That surprised me. I know that
page 2298 } the Commander, when he said Arlington, I know that it's here and I imagined that Culpeper was another close cemetery, but anyway, it was a long drive and down there we went to the police station.

Q. Did you go to the cemetery?

A. After I met young Niles' wife at the police station, we drove over to the cemetery. I believe—yes, it was after because I would not be able to find my way to the cemetery and my wife did not go and so Peggy, that is her first name, Peggy had to show us the cemetery. We went over there because there was a little doubt just where young Niles was. He was no longer at Culpeper. She said she had heard that he had been taken to Alexandria.

So we went over to the cemetery. I called some officer standing by over and asked him if he knew what became of the people that had been arrested and he told me that, I think, he said they were in Alexandria or to the best of his knowl-

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edge they were in Alexandria, so that is the only information I had so far, so we came up to Alexandria.

Q. What time did you get over to the cemetery, approximately?

A. Well, I wasn't paying particularly attention to the time, but it had to be some time in the late afternoon. It was daylight saving time. You know it was light right
page 2299 } up to the late evening then. I didn't pay attention to time, but I did arrive at the Courthouse here in Alexandria at the time Vidnjevich was standing before the Marshal and I think Niles had already been before the Marshal and this was one other trooper, a new one, a person I had never seen before. He was yet to come and they were being released on personal recognizance. Lieutenant Draeger was sitting on the side and there was a Marshal or a bondsman or some official. He was putting them on personal recognizance and Niles had already had his personal recognizance and Vidnjevich was standing in front of this official and then the young fellow I don't know, he came after Vidnjevich. By this time I still didn't look at the time. It was still light out. When we left it was light outside so I couldn't say exactly what time, but it had to be very late then because the drive down to Culpeper took much longer than I even imagined and the drive back was a long drive.

Q. Now, after that funeral, where did you go? Did you go back to Maine?

A. I went back to Maine, yes.

Q. Now, did there come a time when you came back down from Maine?

A. After the funeral?

page 2300 } Q. Any time after the funeral, recently?

A. Yes, recently, now.

Q. How did you happen to come back down?

A. After the Commander was slain and I went back from the funeral, I was under the impression that the Commander had been shot with a rifle. The newspapers said it was a rifle. I had no idea who did it. I couldn't say other than the fact that I felt a sense of loss.

Barbara von Goetz used to write to my wife rather regularly so we used newspaper clippings from her concerning some of the incidents that came after the slaying and it was then that I learned it wasn't a rifle, but it was a Mauser pistol and the Mauser pistol, I learned it was mentioned that John Patler had been loaned a Mauser pistol and the Mauser pistol was never seen again from the year of 1964.

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Now, I recalled distinctly how I met my wife. I met her because of seeing a Mauser pistol right in front of her, so I said, "Claudia, I saw a Mauser pistol right in front of you on the desk. That was Captain Lloyd's." She said, "Yes," and I said, "You worked there all those months and it was there in your drawer every day," and she told me how it happened and everything. So my wife, at the time, had gone to the hospital a little later after we had talked about this. She
page 2301 } went to the hospital because she was having labor pains. She was actually due to have the baby and I had been in bed. I had been sick during the month of September from coming back from the funeral and I thought I had indigestion and all through the month of October until the first week of November, I had been confined to bed for approximately six weeks acute infectious hepatitis. Now, my wife was in the hospital. I am in bed with acute infectious hepatitis and she was in bed for three days about to have the baby and they stopped both contractions and since she was well enough and as soon as I was well enough and I said regardless of the risk of the baby and regardless of the fact that I am still sick, I will have to go down, I said, and tell what we know concerning the pistol.

So we came down. I didn't have the least idea I was to appear as a witness for the simple reason that I have gone and I have served seven years in the state prison in the past. I felt, at the time, that there would be no reason for me to appear as a witness because I could only be harmful as a witness. I didn't think that my wife could appear as a witness because this baby was imminent. So we came down to spend—we even brought our cat with us—so we came down to here and informed the attorneys what we knew concerning
page 2302 } this weapon and to let them take advantage of the information in any way, so well, we were at Douglas Niles' house.

Mr. Morris came over by himself and he asked me and I told him. I said, "I can be of no value to you as a witness in the Court because of my record," and I said, "We can't stay here too long because of my wife." I explained the situation. He said, "Well, will you please try to remain for a few days to see how this develops." He said, "It may not last for any length of time. There is a possibility," he says, "I think we are going to need you." "Well," I said, "all right, we will remain for a while," so we stayed for about a week and half with Douglas Niles.

Now, I didn't know at that time they were planning to move.

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They were planning to move and they had to move. They moved out. Now, here I am with my wife and my cat, so I called Mr. Morris at the office and I said, "I am here with a wife and the cat," and I said, "This trial is supposed to continue for at least another month," and I said, "I can't remain here in a motel with my wife in this condition and the cat. It is a little too much." So he said, "Wait a minute, Frank," he said, "I think we can make some arrangements if you can hang on." He went back on the phone and he said, "Will you come over to the office?" He said, "We have arranged to have you stay with Mrs. Helen Lane," so we took the cat and went over and stayed at Mrs. Helen Lane's house and were certainly sure that we would be on the witness stand here by this past Friday. So the weekend went by and what is this, Tuesday, and here I am, on Tuesday, and it isn't over yet. Now, I have to get home to Maine and my wife is going to have to have the baby or I am going to have to do it myself. What else can I say.

Q. Have you had occasion to go up to Nazi Headquarters from time to time?

A. Yes. I have been there since the time we arrived here, probably close to every night. My wife is a very good friend of Barbara's. As I said they are corresponding regularly and we go up to see Barbara. I go up almost every night. Occasionally, we go out. We had something to eat most every time, but almost every time I have been in the company of Barbara von Goetz, that is the Commander's secretary.

Q. Do you know, of your own knowledge where Mr. Rockwell used to keep his personal effects?

A. Yes. That disturbs me. That disturbs me very much because on the day he was slain, the key was taken and Captain Lloyd, Major Koehl, and Dr. Pierce went and they went in the Commander's room and they took and they opened the safe and this was done, in my opinion, without any meeting of the party or any authorization for them to do so. As far as I can understand, to the present day, there's no reason why there should have been an immediate party leadership change without some, you might say, conference of party members.

Q. Now, are you a member of the Nazi Party?

A. Well, I am still unsure about that. I will tell you what happened. As I said, I am a very close friend of the Commander's, but when I first came down in September, about the middle of September, this '65, Colonel Welch took me to a bank close by. He said, "Listen," he says, "you fill out an ap-

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plication," which I did. I filled out an application for party membership. Then we went over to this bank. The name of the bank I don't know, but I can describe it just about.

You go in on the right. There are some desks and a rather heavy-set man, and a man came and he notarized this application for party membership. It was brought back to Commander Rockwell and Commander Rockwell said, he said, "Frank, because of your prison record, what I am going to do with this application, I am going to put it in the page 2305 } safe." So he put it in the safe. There's no more discussion concerning it. I was never issued a party card. I have never paid \$.10 in dues, I was never asked for my dues, and to the best of my knowledge, that application is notarized and the last place he put it and to the best of my knowledge, it was still in the safe. So whether I am a member or not I still can't say.

The Court: Mr. Hassan?

Mr. Hassan: Well, if Your Honor please, in view of the length of cross-examination and that other problem that you expect me to look into, I would prefer you to let me cross-examine, starting in the morning.

The Court: I am sorry. Mr. Hassan, we have taken so many recesses today and dragged this thing out, I would like to push on for awhile.

Mr. Hassan: We do have a matter that is going to take some time and we should get started on it early.

The Court: I know. You may have to interrupt it. Go ahead.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Mr. Smith, have you got a nickname?

A. Well, I always try to avoid having a nickname page 2306 } name, but some people call me Frank.

Q. How about The Holy Father?

A. Oh, yes, that is the Commander's nickname.

Q. How did you happen to get that name?

A. Well, on my first discussion with him, we discussed the formation of a church, a church that would have no dogma, no creed, but would be—would be acceptable to all faiths, but would have one thing in common, it would be for white people, just as the Moslems. They are for the colored people. We would like to have a church that would accept and embrace

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all the white people. Now, we discussed this church and because of my record, he had a sense of humor. He called me The Holy Father and from then on whenever referring to me, he would call me The Holy Father and that was it.

Q. You said you were in the state penitentiary in Massachusetts for seven years?

A. That's right.

Q. What seven years was that?

A. From the year of '57 up to—well, shortly before the year of '64, just before Christmas.

Q. What was the sentence you received? Was it an indeterminate sentence?

A. No, the first sentence was a fifteen to eighteen year sentence, which was later reduced to ten to twelve
page 2307 } years.

Q. When did you receive that sentence?

A. I had started the fifteen to eighteen year sentence.

Mr. Harrigan: Your Honor, I would object. I think he can ask whether he has been convicted of a felony, which he has already admitted. I don't think he can go into the particulars of where he served it.

The Court: It seems to me that the nature of the offense would perhaps go to his credibility, but the length of the sentence would be *irrelevant*. True, he mentioned it and opened it up on direct, but I wouldn't put in any details concerning that.

Mr. Hassan: I haven't gotten into that. He said his first sentence was fifteen to eighteen years, but was reduced to ten to twelve years, now, we are into a second sentence and we only heard about seven years and it's kind of confusing to me.

The Court: What we are really interested in are the convictions that he has had and for what offenses, if any.

Mr. Hassan: Not exactly, We are also interested in time.

The Court: He has just told you he served seven years, that is the time.

Mr. Hassan: I want to know what seven
page 2308 } years, when they are, whether he is still under
a sentence, whether he isn't, whether he is on
probation or on parole, and then we will get around to some
of these other questions.

The Court: He can tell you that.

Mr. Hassan: That is what I am asking right now.

The Court: The main thing is what is the offense?

Mr. Hassan: I want to know whether he is still on proba-

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tion or whether he isn't, whether he is still on parole or whatever else he has.

The Court: You can ask that, go ahead.

The Witness: Would you like me to explain?

By Mr. Hassan:

Q. I figured you would go right on without me asking you too many questions.

A. Well, sir, the Court sentenced me twelve to eighteen years, then the sentence in Massachusetts, it gets reviewed by an appellate court and upon the review, the appellate court decided that the sentence of twelve to eighteen years for a first conviction was excessive so they reduced this sentence from twelve to eighteen years to ten to twelve years. Now, with time off for good behavior, a sentence of ten to twelve years, you only serve seven years. I am not on parole and I am not on probation.

page 2309 } Q. Where were you living at that time when you started this seven years, before you went in?

A. When I went in, I was living in Back Bay, Boston, at, I think, 119 Queensburg Street, Boston, Massachusetts.

Q. 119, close to Cobblestone Square?

A. Yes, yes, oh, yes.

Q. What was that offense. It was a felony, wasn't it?

A. That was the offense.

Q. That was the offense?

A. Yes, sir.

Q. What was the felony?

A. Malicious destruction of property.

Q. Was there any description of how the property was destroyed?

A. The property was destroyed by the use of dynamite.

Q. By the use of dynamite?

A. That's right, sir.

Q. Now, I was interested in your description of Commander Rockwell's request for your trip to Brown University, that you were added security.

A. That's right, sir.

Q. Where did he use you as added security? Was it because of your knowledge of dynamite?

page 2310 } A. No, sir.

Q. What was the reason?

A. All the years, from the time I have been nineteen years old, I have been an instructor and a manager of boxers. I am very capable of taking care of myself with my hands.

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Q. Did there come a time when you had trouble over a machine gun?

Mr. Harrigan: I object to this, Your Honor.

The Court: Unless it goes to a conviction of some sort, the objection is sustained.

Were you ever convicted of any other felony than the one you have described?

The Witness: The only thing is I am not sure—

By Mr. Hassan:

Q. February 12th, 1953.

A. '53?

Q. Yes, sir.

A. The only conviction I have is the conviction that I just—the only felony conviction that I know of is the conviction that I stated to you. There might have been a possibility of a misdemeanor in the year of '64.

Q. Did it have anything to do with a machine gun?

A. No, nothing to do with a machine gun.

page 2311 } Q. What was your occupation in Maine?

A. For three years I have been recovering from a series of operations, a series of operations that for three years, it is only now that I have the full strength of this left hand and this arm, but I built it up over three years. I had an open heart surgery and so it takes a long time, so for three years, I have had no occupation.

Q. Was this condition a result of an accident?

A. It was.

Q. What kind of an accident?

A. I was shot, eight times, five bullets remaining in my body, in the year of '64.

Q. When you got out?

A. After I got out of prison, that's right, sir.

Q. How did this shooting accident occur?

A. I drove home—well, I drove to the home of a girl friend back in those days and when I pulled up with the automobile, two men stepped out of an open doorway and both of them shot me a total of eight times.

Q. What kind of weapon did they use?

A. A .38 caliber, to the best of my knowledge.

Q. Was this a part of that long history of gang gunfights in the metropolitan Boston area?

page 2312 } A. Well, in one respect I would almost be

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positive in saying yes, and then possibly there might be another motive.

Q. What was the other motive?

A. It could have been political.

Q. By political, do you mean politics of a Republican and Democrat nature?

A. No, I mean politics of the American Nazi Party.

Q. Are you a member of the Nazi Party in New England?

A. No, but I was down and I met and I was with Commander Rockwell upon my release in the month of February. The first time I met him, I met Commander Rockwell in February. I stayed at the barracks and then in March, I think the 14th, I was shot.

Q. Now, did Commander Rockwell give you the name of The Holy Father because of those bullet holes or for some other reason?

A. Well, he probably had some double sense of humor when he said The Holy Father. You can look at it that way. I thought it might be that way, too.

Q. Now, yesterday, your wife said you arrived in Culpeper sometime between 3:00 and 4:00 o'clock, around 3:00 or 4:00. I wonder if you could estimate what time you arrived there? She was with you, wasn't she?

page 2313 } A. She drove. She drove the automobile.

Mr. Harrigan: Your Honor, I object to that.

The Court: What is that?

Mr. Harrigan: The objection is, I don't think you can say somebody said that, what did you say about it, to show that somebody else had told a different story. He can ask him when he went down there, but how can he impeach him with somebody else's testimony?

Mr. Hassan: I am not trying to impeach him.

The Court: The objection is sustained. You can ask him when he went down, but don't try to contrast it with his wife's testimony which he couldn't hear because he wasn't in the room.

By Mr. Hassan:

Q. Did you discuss your wife's testimony with her since she left the stand?

A. Since she left the stand?

Q. Yes, yesterday.

A. She came to me last night. She came in the back room and I said, "How did you do, honey?" and she says, "I was

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told not to discuss the testimony with anyone." I said "All right, Claudia, don't even tell me a word about it." I said, "Don't jeopardize yourself and don't jeopardize anything concerning the case by talking," so my wife hasn't told me anything concerning the testimony and if she started opening up the subject a couple of times in the automobile I shut her right up quick. I said, "I am not going to let that happen."

Q. How many times have you discussed your testimony with Mrs. Lane?

A. Mrs. Lane? Very little. Very little. I discussed what I knew about this case on one occasion and at Mrs. Niles' house. Mr. Douglas Niles' house is when I first gave the information. The first time was Mr. Morris. Then I had to take him over to a meeting.

The Court: It really doesn't make any difference, Mr. Hassan, because I told all the witnesses they could talk to counsel.

Mr. Harrigan: I wouldn't put him on the stand unless I could talk to him and neither would Mr. Hassan. I am sure he talked to all his witnesses.

Mr. Hassan: I kind of got the impression he said hardly at all and I think that is rather significant

Mr. Harrigan: He said with Mrs. Lane, hardly at all.

Mr. Hassan: I can't imagine Mr. Smith talking hardly at all on anything to anybody.

By Mr. Hassan:

Q. Now, when was this trip to Providence?

A. As I stated before, sir, is I arrived down there in the evening before Mr. Rockwell gave his speech at Brown University, so that date would be easily established, and in fact, much better than I can tell you.

Q. Let's see if we can establish it. Was it before or after you were shot up?

A. Certainly long after it?

Q. Afterwards?

A. Oh, yes.

Q. Well, you weren't going to be much help to him with your hands and your boxing knowledge if you are just now getting control of that left arm.

A. I told you I built up that left arm with exercise.

Q. By the time you went to Providence?

A. By the time I went to Providence, I would say, it was in pretty good shape.

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Q. Was that in the year, 1965?

A. I'd say it was '66.

Q. It was after the motorcycle ride from Tokesbury?

A. Oh, yes.

page 2316 } Q. Now, by the way, where did that motorcycle ride go to?

A. Portland, Maine.

Q. Where is that in relation to Ellsworth Falls or Ellsworth Farms?

A. Falls.

Q. How far is that from Portland?

A. About 150 miles above Portland.

Q. North of Portland?

A. North of Portland.

Q. Did you meet him in Tokesbury?

A. I met him there. I was staying at my sister's home.

Q. How far is that from Portland?

A. Approximately a hundred miles.

Q. Did you stay at your sister's home?

A. No, I stayed in the capital with some people, probably a block away from my sister's home.

Q. Now, do you travel a lot?

A. Well, occasionally I make long trips, yes.

Q. Directing your attention to the 26th, 27th, 28th, and 29th of June, where were you, of this year?

A. I am building a garage and also a foundation. During that period, that period would be the 27th of June, during that period, I was up there with Dick Carlyle, page 2317 } who was the man in charge of the construction of the foundation. Actually, he hires. He is sort of what you call the contractor. He hires the various carpenters and the masons. What he does, he used, what he does, he digs and fills the hole and puts in the garage, but he hired the carpenter and the masons, also Bill Brown who also moved the garage that I had already built. He had appraised it. He moved it into the foundation so all this was in the process of construction and I was up there at that time supervising and seeing that everything was done to my satisfaction.

Q. You were in Maine, at home all this time?

A. During that period, yes.

Q. Do you travel by plane at all?

A. No, sir, well, I traveled by plane, sir.

Q. Did you see John Patler in June?

A. June? I didn't see John Patler since the last conversation I had with John Patler was at Christmas time.

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Q. Christmas time. You didn't see him again until now?

A. No, I didn't see John Patler again until today in this Courtroom.

Q. Now, when you came down to meet Commander Rockwell in July at La Boheme, did he tell you any
page 2318 } reason why he didn't want you around the barracks?

A. His reason was just as he stated. He expected something in the line of treachery from someone close to him. He entrusted me in a specific way, with what I would call a duty, an obligation, that in case anything happened to him, so he did not want troopers at the barracks or anywhere else seeing me. As a matter of fact, he wanted this to be a secret meeting and then the first thing he did on the next trip to California is go and inform Captain Forbes of the secret meeting that we had.

Q. Now, what specific instructions did he give you if anything happened to him?

A. To look into the matter very thoroughly.

Q. Did you?

A. That is exactly what I have been doing.

Q. Now, did he tell you that at the time this occurred, he remarked to the boy that was in the car with him that it looked like The Holy Father?

A. That is ridiculous.

Q. Is it ridiculous that he said it?

A. Certainly.

Q. Have you talked to the boy that was riding with him?

A. No.

page 2319 } Q. You haven't talked to him?

A. No.

Q. Do you know who it is?

A. All I know was the last name, Harnette.

Q. How did you find that out?

A. From inquiries.

Q. To who?

A. Up at the barracks, up at the barracks, that was it.

Q. Who did you talk to at the barracks?

A. Captain Vidnjevich.

Q. When did you talk to Captain Vidnjevich?

A. During the past week or so, about this past week.

Q. During this past week?

A. That's right.

Q. Did you talk to anybody when you were here for the funeral?

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A. What was the name of the student?

Q. Yes. Did you talk to anybody about that?

A. No one could tell me anything about this student. No one mentioned it. They wouldn't tell me. I inquired the name of the student, they wouldn't say. I inquired the school. He wouldn't say and it's only this trip here, this last trip that I found out the student's name is Harnette page 2320 } and he is a Georgetown University student.

Q. Did you talk to the same people you did this time that you did in August?

A. No, because when I came there for the funeral, I saw a little collection of people that separated themselves from other people. They had a meeting upstairs. There were some people from Texas. There was Barbara von Goetz. There was Captain Lloyd, who up until this time I hadn't seen since the election. Captain Lloyd appeared. He was in this nice conclave upstairs with Major Koehl and Dr. Pierce. This group went upstairs and then coming downstairs, wherever this meeting was, excluding everyone else. For some reason, they wanted to include me in the party so they asked me to go to dinner with them and I told them I was waiting for my wife. Well, they told me the restaurant and I forget the name, a short distance away, and they said meet us there, but I decided not to meet them there. I didn't want any part of that little group at that time.

Q. Now, do you have any hand guns?

A. I have a .32 revolver, a little revolver that I keep in the drawer of my desk at my home.

Q. Did you bring it with you this trip?

A. Certainly not.

page 2321 } Q. Is that the only hand gun you have got?

A. That is the only hand gun I have.

Q. Now, when you went to Culpeper, what car did you go in?

A. A '63 Lincoln Continental convertible.

Q. That is your car?

A. Well, I signed it over to my wife.

Q. Do you have another car down here that was used for the pallbearers?

A. No, the only car. I do not drive. The only way I could get here with my car was for my wife to drive me down here. She is the one that does all the driving.

Q. Was your car used for the pallbearers?

A. My car didn't go down to the funeral at all.

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Q. Now, when you arrived at the cemetery, was the hearse still there?

A. The hearse was gone and everyone was gone except for a few stragglers, I would say, that were standing around. I think we crossed some railroad tracks. There were a few people standing there. There were some soldiers as you went to the cemetery. There were some soldiers off to the right and we went into just look to see where the Commander would have been buried and an automobile drove
page 2322 } around and I don't remember if it was a police official or some kind of a cemetery guard.

Q. Did you see J. V. Morgan there?

A. No, I didn't see J. V. Morgan down there at all, sir.

Q. Your car was not used for the pallbearers?

A. No, sir.

Q. Did you see any of the Nazis down there?

A. Well, when I say Nazis, I am going to have to assume—well, of course, Mrs. Niles, she had resigned from the party so you can say Nazi or you can say ex-Nazi.

Q. Well, this whole group you have been associated with in connection with George Lincoln Rockwell, did you see any of them there?

A. Douglas Niles' wife—other than the person who called me?

Q. Other than her. You have already told us about that.

A. I don't recall—I don't recall seeing any of the other Nazis.

Q. On your way down there, did you see the hearse?

A. No, I didn't see the hearse.

Q. You didn't pass it coming back?

A. Well, if I did, I certainly didn't see it.

Q. Where is Douglas Niles now?

page 2323 } A. Well, to the best of my knowledge, he said he was going up to Bangor, Maine, but before going there, he was going to stop off at some friends. I didn't inquire their address. As a matter of fact, I don't even know their name, but from general conversation he was going to stop—they live somewhere just over the Maryland line. He was going to stop there and how long he stopped there or whether he is still there now, I don't know.

Q. Do you expect to see him when he comes to Maine?

A. Chances are, well, he has my phone number. I told him when he got to Bangor, when he got settled—he even left some of his belongings in my car, so he is going to call me. They didn't have room for everything in their automobile.

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They have pets and the baby so they gave me a couple of boxes to take home with me when I return, pots and pans.

Q. Now, how many times did Rockwell call on you for added security when there were threats on his life?

A. Well, it's hard to answer directly that way, because when I came down for the campaign, what he did was ask me for suggestions concerning security. What I used to do was work in cooperation with Lieutenant Ealy who was driving the camper. I worked in cooperation with Cap-
page 2324 } tain John Patler and Colonel Welch and one of the suggestions I made at the time and which they took heed of was that the Commander used to stand on top of this camper behind a platform and he would speak with the arc lights overhead and I told the Commander that my suggestion is, you can't be completely protected during the election campaign, but I would suggest that you get that big plate of steel and put it just in back of this platform, that came up on his chest, so this was done.

Then, after that I used to travel with the Commander in my Lincoln over to Washington on errands, and occasionally the Commander would drive, but I always took one of the troopers with me and the two of us would go to the radio station for interviews. We would go to the film, to the television shows that were being filmed and what we would do is escort the Commander in and around during the election campaign. So whether this is a measure of security, I'd say that everything I did during the election was just suggestions as to who we should bring on these trips or what we should do or how we should take certain procedures and they were all measures of security. At that time, though, if somebody threw a punch at me, they probably would have knocked me into pieces.

Q. Now, Mr. Smith, Let's travel to Rich-
page 2325 } mond. Your wife and Mr. Lloyd's wife came here from Texas?

A. That's right.

Q. To work in this campaign, did they not?

A. That's right, sir.

Q. Were they friends before they came here?

A. I can't answer that. I know they were friends while they were here.

Q. Are they still friends?

A. To the best of my knowledge.

Q. Have you had any trouble of any kind?

A. Not that I know of.

Q. Have you seen her or has your wife seen her since you have been here?

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A. The other night I went upstairs with my wife and there was a girl sitting in close to the kitchen. I didn't pay any particular attention as to who she was. I just went up the stairs and when I got upstairs, my wife, Claudia, says, "Elaine is downstairs," and I said, "Yes?" and Claudia says, "She doesn't look any different than she did before," so I did come downstairs with Barbara, and I didn't see Elaine then and Claudia didn't say anything so we just went out.

Q. What day was this?

A. Well now, I had been there almost every
page 2326 } night and I would say it was fairly recently.

Q. It is within this week?

A. Well, this weekend. This could be this weekend. I don't think it was last night. No, it wasn't last night. It could have been this weekend.

Q. Your wife said she didn't look any different than she ever did before?

A. That is what she said.

Q. Did she have her baby today?

A. Did who?

Q. Mrs. Lloyd?

A. Well, I can't tell, I don't know if she had her baby.

Q. You don't know whether she had her baby today or not?

A. I don't know that.

Q. She looks a little different than when you saw her in Richmond today, doesn't she?

A. That is definite.

Q. Now, do you know that she was expecting a baby this week?

A. No, but she was sitting down. I knew what Elaine, from
page 2327 } conversation, that Elaine was going to have a
baby. Now, I don't know whether she had her
baby or was going to have it or whether she
had it today or not.

Q. You didn't talk to her at all?

A. Oh, no, because we went right upstairs to see Barbara and I said the only look I had was a girl sitting—you must remember that at a distance the features on people, they do become blurred. I didn't know that this girl, when I went to the front door and when you look through, you are looking a little distance into the kitchen. There was somebody sitting at the further table nearest the fireplace. It was a girl but I had seen another girl when we first came in with black hair and the girls that come there are sometimes the wives of various visitors and people. Now, I didn't recognize Elaine until

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Claudia says Elaine is downstairs. She doesn't look any different and what she was referring to is this, if you care to hear it.

Claudia didn't get to see Elaine at the time we came down for the funeral and I did. I talked to Elaine and I said Elaine's hair looks different. She used to have it high, very light blonde, piled on top of her head. I said Elaine's hair now looks—it doesn't look quite as blonde and she was wearing it down more and Claudia says, "Well, possibly before she was married, she was retouching it." I am
page 2328 } not being catty in any way. I am just telling
you the answer to the question.

Now, when Claudia saw Elaine downstairs, she comes up telling me she doesn't look any different. She looks the same. She was referring to this hair-do business.

Q. She didn't discuss the pregnancy with you at all?

A. No.

Q. Did she discuss the pregnancy with Elaine?

A. No, she didn't get a chance to talk to Elaine. She went out and talked to Barbara and I didn't look to see if Elaine was there. We went out the door.

Q. If she saw Elaine, she didn't go and talk to her?

A. She didn't talk to her.

Q. Was there any reason for that?

A. I can't give you the answer for that.

Q. They were close friends, weren't they?

A. They were friends during the election. How close, I can't say. I can't say that they were close friends. I knew she knew Elaine and as a matter of fact, was friendly with Elaine, but I wouldn't say I was a close friend.

Q. Did you and your wife avoid talking to her because you were going to testify about this gun?

A. Well, I'll make that very clear. There
page 2329 } was no avoidance on anybody's part. There
was another member of the party who walked
by some of them going to so Barbara says hello and I say
hello, and the same on the part of my wife. We made no definite avoidance of anyone.

Q. Are you familiar with a Star automatic?

A. A Star automatic?

Q. Don't tell me you don't understand my pronunciation. That is Yankee Boston, too, you know.

A. A Star automatic, I don't know exactly what that is.

Q. You don't know what that is? You don't think you ever saw one of those?

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A. I don't know. I never saw a Star automatic. I don't know what a Star automatic is.

Q. Could you be mistaken? Was this the gun that was down in Richmond?

A. I can't say. It looks like the gun in Richmond.

Q. Did you examine the gun in Richmond?

A. I picked it up and looked at it.

Q. What was the Serial Number?

A. I didn't look at the Serial Number. I was looking at the length of the barrel. That first attracted my attention and the general make. When I first saw these attorneys, I described the gun to them. They asked what type page 2330 } of gun and I told them, a box in front of the trigger guard and a long lengthy barrel, and the trigger looked somewhat like a Luger.

Q. It looked somewhat like a Luger?

A. Well, I'm not familiar with a Luger, but this is somewhat the type of one of those slanting actions.

Q. Did it look like a .45 Colt?

A. No, sir, because the .45 Colt, I think, would be more flat, in a general description, across the top. I have seen .45 Colts and I know them fairly well.

Q. Now, when you were in Richmond, how many times did you see the gun?

A. I saw the gun just that one time, the time that I picked it up.

Q. How long ago was that?

A. That was the middle part of September—well, maybe, it had to be a little after the middle part of September. The middle part of September, around the 15th was when I came down so take a few days later. The first trip to Richmond and so that would be in the middle between the middle and the last part of September, 1965.

Q. That was a little over a year after you were shot?

A. Well, now, I have to count the months. I page 2331 } was shot March the 14th and this was in the year '64 and I was down in September, so well, I'm not even going to bother counting the months. If you say it is a little over a year, I will go along with that.

Q. How was your vision then?

A. Well, my vision was—I couldn't recognize you across the street, but I could certainly a Luger, or a pistol, or a .45, or any kind of a gun this close to me in my hand.

Q. Were you wearing glasses then?

A. No, my vision then, close to, I didn't have to wear

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glasses. Just as now, I see better close to without these glasses than I do in the distance. These glasses help me in the distance but close to, if I have to try and read anything, I have to take them off.

Q. At that time were you wearing a patch?

A. I only wear a patch rather than wearing these glasses, because after all you do get tired of colored glasses. At night time, if I am going out, for example, where there is going to be no glare, I will take the glasses off and I will wear a patch over the right eye.

Q. Did you ever discuss guns with Mr. Lloyd?

A. Did I ever discuss guns with Mr. Lloyd?

Q. Yes.

page 2332 } A. I don't remember ever discussing guns with Mr. Lloyd.

Q. Did you double date with him in Richmond?

A. Did I what?

Q. Did you double date with him in Richmond?

A. Double date?

Q. Double date, yes.

A. No.

Q. You and your wife and he and his wife didn't go out together?

A. No.

Q. Did you ever double date with him in Washington?

A. No.

Q. Did you double date with John Patler and his wife.

A. Oh, yes, I went over to—I went to a Greek restaurant in Washington where they have the dances and the shish kebabs and all that sort of thing. He brought his wife along—oh, excuse me, I wasn't with Claudia then. I was with another girl, the girl I brought with me. I just became acquainted with Claudia. I wasn't going with her at the time.

Q. When did you marry Claudia?

A. I married Claudia September 14th, just this past September the 14th.

Q. This past September the 14th?

page 2333 } A. That's right, sir. Well, of last year.

Q. A year ago?

A. Yes.

Q. Did there come a time when you and Elaine and Robert Lloyd and John Patler, Alice, and Claudia were out together?

A. Alice, Robert Lloyd, Elaine, and John Patler, and Claudia?

Francis Joseph Smith, Jr.

Q. You and Claudia?

A. Now, the only thing that confuses me is this. Down at the fair, Robert Lloyd was down there with Elaine. The only part I don't recall I was down there and while he was down there, I knew we had hot dogs and coffee, but John Patler was down there, but I can't remember Alice being at the fair. She might have been, but I can't recall. She was at Richmond, but I recall the time I got out there—

Q. Not what time you got there.

A. Well, I'm saying—you asked me about all these people. I can't tell you whether John Patler's wife, Alice, was there.

Q. A little while ago you never did double with Lloyd.

A. This wasn't a double date. We were all walking down there at the fair booths. Is that a date.

page 2334 } Q. I don't know. I wasn't there.

A. Well, it wasn't a double date. We had hot dogs and coffee.

Q. Now, do you belong to the white power group?

A. That old guard from Commander Rockwell?

Q. The old guard? The new white power that John Patler started to organize when he got out of this in April?

A. I have absolutely nothing to do with that group and I do not want anything to do with that group.

Q. How about the group that was organized by Welch?

A. To the best of my knowledge, I don't know of any group organized by Welch.

Q. You don't belong to it if he has one?

A. If he has one, I certainly don't even know about it.

Q. Do you belong to any in Alexandria?

A. No group in Alexandria.

Q. Have you seen Welch since you came here to Arlington?

A. This time?

Q. This time.

A. No, I called Colonel Welch. He was going to come up here. I called him again. He was supposed to arrive. He had a week's vacation and he told me he had an accident to his neck, dislocated his neck and he said he was practically paralyzed and could not have come up here.

page 2335 } Q. Do you know David Hughes?

A. I never saw or met David Hughes in my life.

Q. Now, have you met with any of the ex-Rockwell group since you have been here this time?

A. Yes, sir.

Q. Who did you meet with?

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A. Well, I met a Bernie Davis individual. This afternoon when I went to the attorney's office, I met Karl Allen and Seth Ryan and I also went and had coffee with my wife and I asked if anybody would care for coffee and Seth Ryan came along and we had coffee.

Q. Now, are you affiliated with any group that any of them are affiliated with?

A. I just met them today. I don't know anything about this group. I wouldn't have anything to do with their group. I don't know anything, who they are affiliated with. As a matter of fact, that is about all I know about these people, other than the fact that they were formerly with Commander Rockwell and that he was definitely hostile against that group of people.

Q. Do you receive any of the publications of the white power or white nationalist people's party or page 2336 } white socialist's party or whatever it may be in Maine?

A. I receive publications when they're sent to me by people I know. Occasionally, John Patler would forward an issue of the Storm Trooper. Sometimes Barbara von Goetz would send me a Rockwell report. I received one issue of this white group you are talking about when it was sent to me from Captain Forbes in California. That is the first time I have ever seen the publication. As a matter of fact, I didn't even know they had a publication. This other people—what is this you are talking about, the nationalist social paper?

Q. Yes.

A. I don't know, let me think. Did I ever see one in Maine? I have seen it and possibly I have seen it so there is a good possibility Barbara von Goetz sent it.

Q. Have you read all that has been in those about this case?

A. I have trouble reading, so the only thing my wife reads to me from books and from newspapers, so she reads me almost every clipping that Barbara von Goetz sends me. She sends me clippings, little cartoons, sometimes she types out jokes, things of that nature and my wife reads to me all of that, but when those newspapers arrive, she might start to read and I say, "I have heard all that junk before," and I put that thing away. And sometimes I pay attention, depending on who wrote the article. page 2337 }

Q. Did the Mauser come to mind after you read all that other stuff sent you by Barbara?

A. When you say all that stuff, the Mauser came to my

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mind when I first learned it was a Mauser and not a rifle, and it came from clippings that Barbara von Goetz had sent to me.

Q. No further questions.

The Court: Any redirect, gentlemen?
May the witness be excused?

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Now this Niles, just for a point of reference, you say he has pets. Will you tell the jury what kind of pets he keeps?

A. He has a lizard. He has another lizard about a foot and a half long and then he has a gecko, he calls it, it is a precious little lizard and it barks like a dog. He has a rabbit. He has one, two, four cats that I know of and when I arrived, there was my cat, it looked like a zoo.

Q. No other questions.

Mr. Hassan: One question. Do you still have your cat?

page 2338 } The Witness: Yes, sir.

Mr. Hassan: You must have watched it close.

The Court: All right. Mr. Smith, thank you very much.

(Witness excused.)

Now, Mr. Harrigan, do you have some testimony that would take about fifteen or twenty minutes?

Mr. Harrigan: I think I have, Your Honor.

Whereupon, BERNARD M. DAVIS, was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please.

A. Bernard Davis.

Q. Your address.

A. 1019 King Street, Alexandria.

Q. Now, do you know Karl Allen?

A. That's correct.

Bernard M. Davis

Q. Do you know Mr. Vidnjeovich?

A. Yes, I have met him.

page 2339 } Q. Did there come a time when Mr. Vidnjeovich called you at Karl Allen's place?

A. Yes, sir. I was there and the phone rang and he called.

Q. Do you recall what date that was?

A. It was one day last week, either Wednesday or Thursday.

Q. And around what time was it that he called you?

A. It was between 7:30 and 8:00 o'clock in the evening.

Q. Do you know who Mr. Vidnjeovich is?

A. Well, as I understand, he was with the Nazi Party. I believe he said he's the investigator in this case for those people or more like the hatchet man or the chief harasser.

Mr. Hassan: Objection, Your Honor.

By Mr. Harrigan:

Q. Now, do you belong to this other organization, the white world, whatever it is?

A. Yes, sir.

Q. You were formerly with Rockwell?

A. Yes, sir.

Q. When he called you, what, if anything, did he tell you?

page 2340 } A. Well, the phone rang, I picked it up. He said, "Who is this?" and as our fashion, I said, "Well, who is this?" and he said, "This is Vidnjeovich," and I said, "Oh, that's nice." He said, "I am coming down there and beat you all up." and I said, "Well, that's fine, come right ahead," and he began to curse, so I just hung up the phone.

Q. Now, who was there?

A. I was there and Karl Allen was there.

Q. Now, had you received calls prior to that from him?

A. To the best of my knowledge, there had been other calls, yes, sir.

Q. Now, did there come a time when you left down there?

A. Yes, sir, I left shortly after the call.

Q. Now, do you know Robert Lloyd?

A. Yes, sir, I do.

Q. Do you know other people that know him?

A. Yes, sir.

Q. What is Mr. Lloyd's reputation for truth and veracity?

A. Well, I would have to say it is very poor. From the

Bernard M. Davis

period of time that I knew him and my associates knew him,
he was known to be quite a story teller.

Q. That is all.

CROSS-EXAMINATION

page 2341 } By Mr. Hassan:

Q. What is your occupation?

A. I work with a firm in Washington.

Q. What kind of firm?

A. Public relations.

Q. What kind of work do you do?

A. I work for the public relations firm in Washington.

Q. What is that firm? What kind of work do you do for them, sweep the floor or what?

A. It's land development. We work business deals and I am generally the leg man for them.

Q. What does the leg man do?

A. You run errands and carry papers back and forth.

Q. Do you engage in investigative work?

A. I have.

Q. Are you licensed to do that kind of work?

A. You don't have to be licensed.

Q. Have you been investigating this case?

A. No, sir.

Q. Have you talked to any of the witnesses in this case?

A. Yes, sir.

Q. Who has it been with?

A. The defense witnesses.

page 2342 } Q. Who has been talking to them with you?

A. Well, it's always in the presence of the attorneys.

Q. Always in the presence of the attorneys?

A. That's right.

Q. Have you been working with any other investigators?

A. Not on this case, no, sir.

Q. Not on this case. Do you work with Mr. Hunt?

A. No, sir.

Q. Have you done any work with Mr. Hunt?

A. I have been with him on numerous occasions, but I have never done any work with him.

Q. Was he investigating this case?

A. To the best of my knowledge, he is.

Q. Was he when you were with him?

A. No, I would have to say no, sir.

Bernard M. Davis

Q. Have you been with Mr. Sheehy?

A. No, sir.

Q. What kind of investigative work do you do without a license?

A. Well, I have worked for Allied Investigating in Washington and we handle insurance matters, domestic cases, and undercover work and to the best of my knowledge, you don't need a license. The agency has a license and I
page 2343 } worked under the agency's license, but personally, I don't have to have one.

Q. Do you work in Arlington County?

A. No, sir.

Q. Where do you work?

A. In Washington, D. C.

Q. Have you done any investigating in connection with this case in Arlington County or in the Commonwealth of Virginia?

A. No, sir.

Q. What witnesses have you talked to in the presence of the attorney?

A. Mr. Hunt, I believe he is going to be a witness.

Q. Did you talk to Mr. Hunt in the presence of the attorney?

A. That's right.

Q. What were you doing, answering questions or were you asking him questions?

A. Well, I really wouldn't phrase it like that, talking about questions or he was asking me questions.

Q. Now, how long have you known Vidnjevich?

A. Well, sir, I have known him for some time.

page 2344 } Q. When did you first meet him?

A. I first met him at the funeral.

Q. Do you know his voice on the telephone?

A. Yes, sir.

Q. How do you know that?

A. I have listened in on other conversations when he called our office.

Q. What have you been doing, wiretapping?

A. We have an extension.

Q. You have listened in?

A. That's right.

Q. How do you know it was him on the other conversations?

Bernard M. Davis

A. He identified himself to the people he was talking to.
Q. How do you know that is who it was?

Mr. Harrigan: That is argumentative, Your Honor. Vidnjevich already testified he called.

Mr. Hassan: Vidnjevich testified he didn't call. Vidnjevich said they called him.

The Court: Well, the objection is overruled.

The Witness: He called and identified himself to me.

By Mr. Hassan:

page 2345 } Q. Whoever that was. That is who you say
was Vidnjevich?

A. All right.

Q. You didn't know his voice prior to that?

A. I had heard him speak before.

Q. Did you know, at that time, it was him?

A. He said it was.

Q. But you didn't know he was who he said it was?

A. Well, it was the same voice I heard in Culpeper.

Q. Did you call him?

A. Did I ever call him?

Q. Yes.

A. No, sir.

Q. And the mere fact of saying it was his name doesn't make you sure it was him, does it?

A. Within a reasonable doubt, I would say it was him.

Q. The same kind of reasonable doubt you have when you characterize him as a hatchet man?

A. Well, let's just say he has a reputation for it.

Q. Are you a member of the community in which he is?

A. Well, no, sir. In the political community, yes, I am.

Q. In what?

page 2346 } A. In the political community.

Q. In the political community?

A. That's right.

Q. And he has a reputation?

A. That's right.

Q. Among other hatchet men?

A. How's that?

Q. Is his other reputation among other hatchet men?

Mr. Harrigan: That's argumentative.

The Court: The objection is sustained.

Bernard M. Davis

By Mr. Hassan:

Q. Are you a hatchet man?

A. No, sir. I don't go around harrassing other people.

Q. What do you do?

A. I mind my own business.

Q. Then why are you investigating?

A. Who said I was investigating?

The Court: He testified he was not.

Mr. Hassan: No further questions.

The Court: Any redirect?

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. You said that you belonged to the Nazi
page 2347 } Party at one time?

A. Yes, sir.

Q. When did you get out?

A. September 1st, 1963.

Q. What was your duty up there?

A. I was a security officer.

Q. Did you ever make a gun list up there?

A. Yes, I did.

Q. Did you ever keep a copy of it?

A. Yes, sir.

Q. Do you have it with you?

A. Yes, sir.

Q. Have you got a gun registered to Mr. Lloyd?

A. I do.

Q. Could I see it?

Do you have other listings other than Mr. Lloyd's?

A. Yes, I do.

Q. Do you have a whole card file of it?

A. Yes, sir.

Q. Do you have those?

A. Yes, sir.

Q. I'd like to offer Defendant's Exhibit V.

Mr. Hassan: I want to question him a little bit.
page 2348 } Mr. Harrigan: I have some more questions
for him.

Mr. Hassan: Just on the introduction of these.

Bernard M. Davis

VOIR DIRE EXAMINATION

By Mr. Hassan:

Q. When did you make these cards?

A. In 1963, sir.

Q. Where did you make them?

A. The headquarters on Randolph Street.

Q. How do they happen to be in your possession?

A. Because when I left, I took them with me.

Q. This is your personal list and not the property of the American Nazi Party?

A. It was when I was there. When I left, I took it with me.

Q. Who had possession of the Serial Number 9811 when you made that card out?

A. Robert Lloyd.

Q. Robert Lloyd had possession of it?

A. That's right.

Q. Did you make any other list besides this that you left there?

A. No, sir.

page 2349 } Q. You just took this with you?

A. That's right.

Q. When did you write this on that card?

A. In 1963.

Q. Where have these cards been since 1963?

A. They have been in my possession.

Q. When did you first examine them after you left the Nazi Party?

A. When did I first examine them?

Q. Yes, sir.

A. Well, it is difficult to say. I would run across them from time to time as you go through your files.

Q. When have you used them before this case?

A. I never have.

Q. Never have?

A. No, sir.

Q. Where did you keep them?

A. I kept them in my personal files.

Q. Where is that?

A. In my home.

Q. Where is that?

A. It is at 1019 King Street.

Q. How long have you lived there?

A. A little over two years.

Bernard M. Davis

page 2350 } Q. Is that your home or is that Karl Allen's home?

A. That is my home. I live there, too.

Q. You both live there?

A. Yes, sir.

Q. Do you own that house?

A. No, we rent it.

Q. Now, with all those cards made in 1963, whereabouts did you make them?

A. I said I made them in my office.

Q. Where was that?

A. At 928 North Randolph Street which was, as you know, the office of the Nazi Party.

Q. Was John Patler there then?

A. I don't believe he was there when I made the list, no, sir, because he made it around in the spring of the year.

Q. He was up in New York, wasn't he?

A. I believe he was in New York.

Q. He wasn't in the party at that time, was he?

A. That's right.

Q. You never did revise a list afterward?

A. It was current until the day I left.

Q. But you don't know what happened to the guns after the date you left?

page 2351 } A. No, sir, I don't.

Q. What date was that?

A. September 1st, 1963.

Q. 1963?

A. That's correct.

Q. No further questions.

Your Honor, I object to it.

Mr. Harrigan: I would like to offer these in evidence.

The Court: Well, it seems to me you are trying to prove a point that the prosecution has already produced evidence on. It does not vary from that. The prosecution produced a later gun list that had Mr. Lloyd's name on it, too, and this, to me, doesn't seem to have any particular competence to prove the fact in this case because it was cut off in 1963 and wasn't kept current after that time. What would it be competent to prove? There is no issue about that fact.

Mr. Harrigan: It's always been listed under this name. There never has been a list made and they will never produce one that Lloyd didn't have the gun in his possession the whole time.

Karl Allen

The Court: I think the Commonwealth concedes it was Lloyd's gun and they produced a list to produce page 2352 } that very thing as of a later date than that.

Mr. Hassan: And it was a list furnished by the Army and not an individual and strangely enough, this has got a serial number and the other list doesn't have a serial number. He didn't leave a list that was official and has a serial number.

Mr. Harrigan: This has a serial number.

Mr. Hassan: The official list does not.

Mr. Morris: The official list does.

Mr. Harrigan: The official list doesn't.

The Court: All right. I consider the weight to be very slight.

Exhibit Number V will be admitted.

(The document previously referred to was marked Defendant's Exhibit No. V for identification and received in evidence.)

The Court: Any further questions of the witness on behalf of the defense?

Mr. Harrigan: No, Your Honor.

The Court: All right, Mr. Hassan.

Mr. Hassan: No further questions.

The Court: All right, sir.

page 2353 } (Witness excused.)

Whereupon, KARL ALLEN, was called as a witness on behalf of the defense, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please, and your address.

A. My name is Karl Allen. I live at 1019 King Street in Alexandria.

Q. Now, Mr. Allen, were you formerly a member of the Nazi Party?

A. Yes, sir, I was.

Q. Are you now a member of the White Power Party?

A. No, sir, its called the White Party.

Q. Do you know Mr. Vidnjevich?

Karl Allen

A. Beg your pardon.

Q. Do you know Mr. Vidnjevich?

A. Yes, I do.

Q. Have you spoken to him on any occasions?

A. Yes, I have.

Q. Do you know his voice?

page 2354 } A. I do.

Q. Now, calling your attention to December 4, I believe it was, was Bernie Davis at your address early in the evening?

A. Bernie Davis is at my address almost every day. As far as December 4, I don't know the exact date but that would be last week when he was there.

Q. Did there come a time there when Vidnjevich called?

A. Yes, he called our place and Mr. Davis answered the phone.

Q. About what time was that?

A. Between 7:00 and 8:00 o'clock in the evening.

Q. Now, did something occur later on that evening or early the next morning?

A. Yes, sir. We had a car burning in our back yard of our place at 1019 King Street.

Q. What time was the car burned?

A. Well, I heard the next day, I did not see it burning myself, that it occurred around 3:00 o'clock.

Q. Did you see the car the next day?

A. 3:00 a.m.

Mr. Hassan: I object. It's all hearsay.

The Court: The objection is sustained as to the time, which is purely hearsay.

page 2355 } By Mr. Harrigan:

Q. Did you see the car the next day?

A. I did, yes.

Q. Did you hear any fire engines that evening?

A. No, I was unaware of its burning until the next day.

Q. Had you seen the car in the driveway earlier that day?

A. Not to my knowledge. Earlier that day, no, sir, I don't recall seeing the car.

Q. Now, when you got up the next morning, did you see the car?

A. The car was called to my attention about 10:00 a.m. the next morning.

Q. Did you look at it?

Karl Allen

A. Yes, sir, I looked at it and took pictures of it.

Q. What was the condition of the car?

A. Well, the back of the car had been burned from the tires back over the trunk.

Q. What was the condition of the tires?

A. The tires apparently had been cut. That would be in my estimation and it definitely had been melted by the fire.

Q. All right. Now, did you get a call that morning from anyone?

page 2356 } A. Yes, I had a call around 3:45 in the morning by a voice which I know to be that of Mr.

Vidnjevich.

Q. What did he say?

A. Which the conversation was very short. He asked me if things were hot enough for me and I just hung up the phone.

Q. You didn't know what he was referring to?

A. He did say a few other words, but I don't recall them. I had received calls earlier at late hours from him before and I was annoyed about him, so I just hung up the phone after the one statement.

Q. Did you take a picture of that car?

A. Yes, sir, I took a picture of it.

Q. When?

A. The next day.

Q. I show you this. Can you identify that?

A. Yes, sir, that is the picture I took of the car the next morning.

Q. I'd like to offer this in evidence, Your Honor.

The Court: Is there an objection?

Mr. Hassan: No objection.

The Court: It will be received as Defendant's X.

page 2357 } (The photograph previously referred to was marked Defendant's Exhibit X for identification and received in evidence.)

By Mr. Harrigan:

Q. Mr. Allen, are you a college graduate?

A. Yes, I am.

Q. Where did you graduate from?

A. Florida State University and College University.

Q. Did you receive any other calls from Vidnjevich?

A. Yes, sir. I have received quite a few in the last month or so, since October.

Karl Allen

Q. Have any of them been threatening calls?

A. They don't particularly threaten bodily harm, but they threaten things as I should move out of town. It would be good for my heath. If I were to return to Florida and so forth.

The Court: Mr. Hassan, you do not wish to begin your cross-examination at this time?

Mr. Hassan: Not at this time, Your Honor.

The Court: All right. Mr. Allen, have you sworn out a criminal warrant or brought any civil suit as a result of this occurrence?

The Witness: No, sir. That car doesn't belong to me, it was in my back yard and I have reported several incidents to the Alexandria Police, but I haven't taken any warrants out. No, sir.

The Court: Do you know if the owner of that car did?

The Witness: No, sir, I don't know whether he did or not.

The Court: Who was the owner of the car?

The Witness: His name is Dodd. He is known as Ray. I don't know his exact name, probably Raymond.

The Court: Do you know if the police investigated?

The Witness: Yes, sir, the police came up and investigated and the fire inspector also investigated it.

The Court: You are not aware of any civil or criminal proceedings that have been brought?

The Witness: No, sir, I'm not aware of any.

The Court: All right.

Mr. Harrigan: May I ask one question on that, Your Honor?

By Mr. Harrigan:

Q. Now, have you had occasion to call the police regarding other incidents down there?

A. Yes, I have called them and each time an incident took place, with the exception of some of the phone calls.

Q. What type of incidents?

A. Well, my front glass was broken, the plate glass window I had. I live in a building that would be classified as a store-type front building.

Q. What other incidents?

A. Just like last night, for example, there was some unknown person on the roof, on the second floor. They were seen running away and that was reported.

Karl Allen

Q. Any other incidents which were reported to the police that were investigated? What about gun shots?

A. Oh, yes. There was one gun shot. I didn't report that. There was someone else that reported that.

Q. Well, was it reported?

A. I mean I wasn't there at the time the gun shot took place, but it did occur on the property and it was reported by the person who was there at the time the gun shot occurred.

Q. That is all.

Mr. Morris: If Your Honor please, do you want us to get the answers that you asked him, whether or not it was reported to the police for tomorrow?

The Court: I will leave that to you.

Mr. Morris: All right.

page 2360 } The Court: If you want to bring it out, go ahead.

Ladies and gentlemen, we will recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 6:45 p.m., the taking of the Court hearing was adjourned to reconvene at 10:00 o'clock a.m., December 13, 1967.)

* * * * *

page 2363 } PROCEEDINGS

The Court: Ready gentlemen?

Mr. Harrigan: Ready.

Mr. Hassan: Ready, Your Honor.

The Court: Call the Jury.

Whereupon, KARL ALLEN, resumed the stand, having been previously sworn, was further examined and testified as follows:

CROSS EXAMINATION

By Mr. Hassan:

Q. Mr. Allen, you say your address was 1019 King Street?

A. Yes sir.

Q. How many telephones do you have there?

A. I have one.

Karl Allen

Q. And what is that phone number?

A. KI 9-9371.

Q. Is that a pay phone?

A. Yes sir.

Q. Where is that located?

A. It's located on my first floor with an extension on the second floor.

Q. How many extensions do you have?

page 2364 } A. I just have one.

Q. Now, on this phone call you referred to around, between 7:00 and 8:00 o'clock I think you said the 4th of December, that was received by Mr. Davis. When did he receive that on the first floor, or the second floor?

A. That was on the first floor.

Q. Where were you?

A. Seated directly by the phone on the extension.

Q. Did you get on that phone?

A. Excuse me, sir. You asked the number of extensions. I have two extensions. One is directly by the phone, itself.

Q. One is directly by the phone, itself?

A. Yes.

Q. And were you upstairs?

A. Yes sir.

Q. And do you pay for two extensions or do you pay for one?

A. Well, I pay for two.

Q. You pay the telephone company for two?

A. Yes sir.

Q. How long have you been doing that?

A. That number has been in there—no I changed the number one time. I originally got a phone two years ago. I changed the number once and one time I had another private line on the third floor.

Q. Is it true you had this phone moved in April of 1965 from the first floor to the second floor?

A. I might have, yes.

Q. And how long have you had the two extensions?

A. To tell you the truth, sir, I don't remember exactly how long. I think since about April of this year.

Q. April of this year?

A. Yes sir.

Q. And you've been paying for two extensions; there's no mistake about that?

Karl Allen

A. As far as I know, I haven't checked my bill but as far as I know, yes.

Q. Did you install one of the extensions or did the telephone company install them both?

A. I have no—correction—yes sir, the phone was installed by someone else and I'm only paying for one extension. You're right. I correct that statement. The extension on the second floor was not installed by the telephone company and I do not pay for it.

Q. That's because the requirement on the pay phone is the extension has to be inside the pay phone?
page 2366 } A. Yes sir. Although one time there was an extension there by the phone company on the second floor.

Q. Now, this call that was received by Davis, did you listen in on that call?

A. No sir. This particular call was on the ground floor where there is—there are two rooms with an opening between the rooms. The pay phone is right inside the opening in the second room. The extension is immediately outside the opening in the first room and between the extension and the pay phone, there's a distance of no further than from myself to the Judge here.

Q. But you didn't listen in on that call?

A. No sir. I was sitting immediately at a desk in the front room by the extension although I was not listening on the extension.

Q. You don't know who was on that phone except what Davis told you?

A. That's correct. Yes sir.

Q. Now did you see this automobile that was burned belonging to a man by the name of Dodd?

A. That's my understanding of his name, yes sir.

Q. Do you know Mr. Dodd?

A. I know him by sight. He lives next door
page 2367 } to me.

Q. Right next door to you at 1021?

A. Yes sir, 1021.

Q. Does he park his car there all the time?

A. Yes sir.

Q. So it's not a strange car?

A. No sir.

Q. Have you been feuding with him about parking in your backyard?

Karl Allen

A. I had one little feud quite some time ago but since that time since I don't have a car, I don't say anything about him backing in my backyard.

Q. How many people had cars at that time?

A. Just one.

Q. How many people live there at that house?

A. Two people other than myself, Davis and Larry Sands.

Q. Anyone else?

A. No sir.

Q. How long has Larry Sands been there?

A. About a year.

Q. About a year?

A. Yes sir.

Q. Now who has the car at your address?

A. Bernie Davis has a car.

page 2368 } Q. Has he been feuding with Mr. Dodd about the parking of the automobile in the back?

A. No sir—I don't know. Of course, you would have to ask him about that for sure.

Q. But as a matter of fact, Mr. Davis could have set the fire, couldn't he?

A. I suppose anybody could have set it.

Q. Did you ever hear who Mr. Dodd thought set the fire?

A. No sir.

Q. Do you know anybody by the name of Tony who lived—

A. (Interposing) No sir.

Q. Would it surprise you to know that the suspect—

A. (Interposing) Yes sir, that would surprise me.

Q. As a matter of fact, no one mentioned Vincjevich's name there until three days later when the fire marshall came?

A. I don't know, sir. I didn't speak to the fire marshall.

Q. You didn't mention Mr. Vincjevich's name did you?

A. I mentioned it to Mr. Dodd.

Q. Mr. Dodd?

A. Um hmm.

Q. When did you do that?

A. At the time I heard the car was burned.
page 2369 } He was in the backyard at the time so I mentioned it to him.

Q. As a matter of fact, there was a five gallon can of gasoline parked right behind that car, wasn't there?

A. I don't know.

Q. Just right there on the ground?

A. Possibly. It could have been. I don't know.

Karl Allen

Q. As a matter of fact, the car was unlocked and anyone who wanted to burn it could have set the fire out rather than in the back of the car, isn't that right?

A. I don't know.

Q. You took pictures of it?

A. Yes, I took pictures but I didn't try to open it.

Q. Now, on this shooting, when did you say that happened?

A. The first part of October.

Q. The first part of October?

A. Yes sir.

Q. Wasn't it a couple of weeks ago on a Saturday night?

A. No sir, it wasn't a couple of weeks ago on a Saturday night.

Q. It was in the first part of October?

A. Yes sir.

Q. What was the shooting done with?

page 2370 } A. All we know is that a bullet went overhead of a person standing in the backyard and that's all we reported.

Q. You didn't report that it came from another end of an alley where nobody was seen?

A. I didn't make the report but I understand it did come from the alley.

Q. It was a high powered rifle that was reported?

A. I don't know sir. I said I was not there at the time when the shooting took place and I did not make the report.

Q. Wasn't that case reported as unfounded because there was no marks on the wall where the man was standing and no cartridges found in the alley where the shot came from?

A. Very likely, yes.

Q. Now you publish a paper called the "White World"?

A. Yes sir.

Q. And did you send out this document?

A. Yes sir.

Mr. Hassan: I would like to have that marked for Commonwealth's Exhibit No. 68.

(Whereupon, Commonwealth's Exhibit No. 68 was marked for identification.)

By Mr. Hassan:

page 2371 } Q. Now, on this document did you say, "we have interviewed—

Karl Allen

Mr. Harrigan: Object to reading the document. It's not in evidence.

The Court: Objection is sustained.

Mr. Hassan: Then I offer it in evidence.

The Court: Has it been identified?

Mr. Hassan: Yes sir. He said he sent it out.

The Court: Is there objection?

Mr. Harrigan: Yes, Your Honor. All it is is a circular, an advertisement.

Mr. Hassan: More accurately described as a "flyer" for money.

Mr. Harrigan: That's right.

The Court: What's the basis of the objection?

Mr. Harrigan: Your Honor, I don't think the circular adds anything. All it is is there's a circular for money and they've got a report on certain incidents and I don't know what the basis of offering this is for.

The Court: What does it prove, Mr. Hassan?

Mr. Hassan: It states in there that they have talked to the attorneys for both sides and it's going to his veracity.

Mr. Harrigan: He didn't say he wrote that.

page 2372 } Mr. Hassan: It says "we".

Mr. Morris: He says he mailed it out.

Mr. Hassan: No indeed. That isn't what he said.

The Court: I wouldn't admit this into evidence and I sustain the evidence to it.

You may cross examine on that point, Mr. Hassan. You may ask if he said that, if it says that and—

By Mr. Hassan: (Interposing)

Q. Does this flyer say among other things "we have—

Mr. Harrigan: I object to reading the flyer. I think he can ask him whether he said that and if he denies it—

Mr. Hassan: (Interposing) He admitted he sent it out.

The Court: Over ruled, if you restrict it.

By Mr. Hassan:

Q. "We have interviewed all major parties involved, including witnesses, attorneys and investigators, parties for both sides"

Did you send that out?

A. Yes sir.

Karl Allen

Q. What attorneys for the Commonwealth have you interviewed?

page 2373 } A. I was not using the word attorney to include the Commonwealth. I was not thinking of you as an attorney so much as a prosecutor. I suppose that is attorney. Where it says attorneys I meant the attorneys for the defendant, witnesses and investigators for both sides.

Q. What investigators for the Commonwealth have you talked to?

A. As I stated, we interviewed—your investigators have talked with me and I've talked with them, Mr. Light, I don't know the proper title, Mr. Light and Mr. Crickenberger.

Q. Did they question you or did you question them?

A. There was a discussion.

Q. A discussion?

A. Yes.

Q. You mean you refused to answer their questions and you wanted to—

A. (Interposing) No sir, I answered their questions.

Q. You didn't talk to any attorneys for this side of the case?

A. No sir. There were attorneys there at the time I wrote it and I was referring to the attorneys for the defendant, it's a group phrase.

Q. Are all your publications that accurate?

page 2374 } A. Yes sir.

Mr. Hassan: No further questions.

The Court: Any redirect?

What is the number of that for identification, 68?

Mr. Hassan: I do have one further question, Your Honor.

The Court: Go ahead.

By Mr. Hassan:

Q. Are you a member of the White Peoples Army of Liberation?

A. No sir.

Q. Have you ever heard of it?

A. Never heard of it.

Mr. Hassan: No further questions.

Mr. Harrigan: What is it?

Mr. Hassan: I'll tie it up before this case is over.

Karl Allen

Mr. Harrigan: All right.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Mr. Allen, Rockwell even had disagreements with you didn't he?

A. We had disagreements, yes sir. That's the reason I left there in 1963.

page 2375 } (Whereupon, Defendant's Exhibit Y was
marked for identification)

By Mr. Harrigan:

Q. Will you identify that?

A. It's a letter Mr. Rockwell made to me in February of 1965.

Q. Does that reflect—

A. (Interposing) I haven't seen it for sometime.
Do you mind?

Q. When you were with Rockwell's organization, what was your rank up there?

A. At the time I left I was a deputy commander.

Q. Which would be the same rank that Koehl was or higher?

A. As far as I know, yes.

Q. Is that Mr. Rockwell's signature on there?

A. Yes sir.

Mr. Harrigan: I'd like to offer this in evidence, Your Honor.

Mr. Hassan: No objection.

By Mr. Harrigan:

Q. Were you in the Army?

page 2376 } A. Yes sir.

Q. What was your rank in the Army?

A. I was a First Lieutenant.

Mr. Harrigan: That's all.

The Court: This will be received in evidence as Defendant's Exhibit Y.

Sam Ervin

(Whereupon, Defendant's Exhibit Y was entered into evidence.)

The Court: May the witness be excused?

Mr. Hassan: I have no further questions.

Mr. Harrigan: One last question.

By Mr. Harrigan:

Q. That call you got, are you sure that Vincjevich said it's hot enough for—

Mr. Hassan: (Interposing) I object.

Are we starting back where we started again?

Mr. Harrigan: I think we covered that; I'm not sure.

The Court: All right, sir, you're excused.

Mr. Harrigan: Call Sam Ervin.

Whereupon, SAM ERVIN, was called as a
page 2377 } witness on behalf of the Defendant, and having
been previously duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Now, would you state your name and address please?

A. Sam Ervin, 2522 Lee Highway.

Q. Do you know John Patler?

A. Yes sir. He's my son-in-law.

Q. Now, what's your daughter's name, John's wife?

A. Alice.

Q. Calling your attention to August 25, 1965, '67, excuse me, who was living at your home at that time?

A. At the Arlington home? I was living there and Alice and John and their children.

Q. Do they have any children?

A. And their two children.

Q. What are their names?

A. Mark and Nick.

Q. And how old is Mark?

A. Three.

Q. How old is Nick?

A. One.

Sam Ervin

page 2378 } Q. Now that morning, was Alice and John
and you in the house earlier that morning?

A. Yes sir.

Q. Now did there come a time when you left early that morning?

A. Yes, I left at—well, I came out of the bathroom at 9:20. I looked at the clock. It was 9:20 and at that time I went to my—I live—my shop and store are in the basement of the house.

Q. What kind of shop do you have?

A. T. V.

Q. T. V. repair?

A. Sales and service and it's in the basement of the building. I went down and made out a deposit slip and then I left and went to the bank, to the Clarendon Trust, on Washington Boulevard and from there I went to Arlington Electronics wholesalers and had an order filled and waited for it to be filled and then I came back home.

Q. You say you went to the bank, which bank was that?

A. Clarendon Trust.

Q. That was to take your deposits over?

A. Yes.

Q. And from this bank, where did you go,
page 2379 } directly to Arlington Electrical wholesalers?

A. Yes.

Q. How often do you go to Arlington Electrical wholesalers?

A. Oh, an average I guess of every other day, something like that.

Q. So this is an established procedure for you?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did you go anywhere else after you got the supplies from Arlington Electrical wholesalers?

A. No.

Q. After you left there, where did you go?

A. Came back home.

Q. And what time did you get back home?

A. Well, I would say it would have been at least 10:00 o'clock. I didn't look at the clock but it would have been at least—it would take me—I went downstairs and made out the deposit slip and went to the bank and to Arlington Elec-

Sam Ervin

trical wholesalers and had my order filled and got back home, it would have been 10:00 to 10:15.

Q. Now, when you got back home, who was
page 2380 } there?

A. John and Alice and the children.

Q. Now, do you own a car?

A. Yes.

Q. What kind of a car?

A. It's a Ford stationwagon.

Q. Do you recall the tag number?

A. 656 054—626 054.

Q. Now, after you got back home, did there come a time when John and Alice and the children left?

A. Yes, they left when I got back.

Q. All right.

A. (Continuing) Sometime after I got back.

Q. How much time elapsed between the time you got back and they left?

A. Very little. They were—left shortly after I got back.

Q. All right.

Did you know where they were going?

A. Yes. They were going to the Falls Church post office.

Q. And how did they propose to get there?

A. In my car, the stationwagon.

Q. Is that the same car that you had previously driven to the Arlington—

page 2381 } A. (Interposing) Yes.

Q. (Continuing) Electrical wholesaler?

A. Yes.

Q. All right.

Do you have a credit card?

A. Yes, I have several.

Q. Gasoline credit cards?

A. I have several of them.

Q. Did Alice have it on that day?

A. Yes, she had one of them.

Q. All right.

Now, does John have a license to your knowledge?

A. Driver's license?

Q. Yes.

A. No.

Q. Now, when John left—strike that.

Now, who all left to go to the Falls Church post office?

Sam Ervin

A. John and Alice and Nick, I believe, and I believe they left Mark with me.

Q. Now, Nick is the baby?

A. Yes.

Q. One year old?

page 2382 } A. Yes.

Q. Now when—did there come a time when you saw John and Alice again?

A. Yes, they came back and Alice came in. I saw her get her checkbook, took a check and then I came upstairs from the basement and told her to—before she left again to wait that I wanted to go across to get something at Seven Eleven.

Q. Was John there?

A. Yes he was there.

Q. All right.

A. (continuing) And I went across and made my purchase at Seven Eleven and came back and at that time they—I gave Alice a package to mail for me at the post office and they left again.

Q. And after they left the second time where did you go then, were you upstairs or downstairs?

A. I went back downstairs.

Q. To the shop?

A. Yes.

Q. Now did there come a time when you again saw Alice and John in there?

A. Yes. After they made that round, the next
page 2383 } time I saw John was—the day before, I came back from down in the country and I had brought a big box of groceries which I put in the kitchen and the next time I saw John was when he brought the box of groceries downstairs, put them in the storage room which was just before, just before 12:00 o'clock, just before lunch.

Q. How much before 12:00 o'clock?

A. Not over fifteen minutes.

Q. And did you see—did John bring in that bag of groceries?

A. It was a box. He brought the box downstairs.

Q. Did you see him do that?

A. Yes.

Q. All right.

Now I show you this shirt, Commonwealth's Exhibit 8B, do you recollect whether that is John's shirt?

A. That looks like what he was wearing.

Sam Ervin

Q. Do you recognize those pants?

A. Well, he had dark pants on, that's all I remember. At this late date, I couldn't identify every piece of pair that he had on but he didn't have a coat on when he came down. He just had on his shirt and pants.

page 2384 } Q. The regular shirt and pants?
A. Yes.

Q. Now then, you went back downstairs to your shop?

A. I was downstairs when he came. I didn't come upstairs that time.

Q. All right.

Now, did you have some problems with your heart, Sam?

A. Yes.

Q. And when did you first have problems with your heart?

A. Well, I had a heart attack in January, the latter part of January.

Q. Of this year?

A. Yes. It was sometime in the twenties, during the twenties of January, between the 20th and 27th of January. I don't remember exactly the date but it was the latter part of January.

Q. I see.

Now, did John help you? Were you able to handle this business yourself?

A. What do you mean?

Q. Did John help you in the business at all during this period of time?

page 2385 } A. While I was sick?
Q. Yes.

A. Yes.

Q. All right.

Now, is there any doubt in your mind that the last time you saw John was that day, before noon which was approximately 11:45?

A. No, there's no doubt.

Q. Now, do you have a farm?

A. Yes.

Q. And whereabouts is it?

A. In Highland County, Virginia.

Q. And has John been down on that farm?

A. Yes sir.

Q. And does anybody live on that farm?

Sam Ervin

A. No, only when we're down there. We're down there, we were down there about half the time at that time.

Q. Does anybody work down there?

A. Yes.

Q. Who is that?

A. Tom Miller.

Q. And where does he live?

A. He lives in, oh, I guess, a mile from there, something like that, a little over a mile, I guess probably a
page 2386 { mile and a half, a mile to two miles, something like that.

Q. Now, did you ever do any target practicing on your farm at your house?

A. Yes.

Q. Did you ever have any guns down there?

A. Yes.

Q. What kind of guns?

A. We have a twenty-two, a twenty-five, we had a rifle down there at that time, my son's rifle was down there at that time.

Q. I see.

Any other guns?

A. Well, that was all that was down there, I guess.

Q. Now, did John ever do any target practicing down there to your knowledge with you?

A. Yes, we've all done target practice down there.

Q. It's not uncommon, is it?

A. Not what?

Q. It's not uncommon for you to do target practice?

A. Oh no.

Q. Now, is your land posted?

A. No.

Q. Then would you explain to the Jury—they
page 2387 { probably already know but would you explain
to the Jury what that means in having your
land posted?

Mr. Hassan: Objection, Your Honor. That's a legal opinion.

Mr. Harrigan: I don't think it is.

The Court: I'll let him answer as to what it means to him.

The Witness: It's posted—

Mr. Hassan: (Interposing) He said it was not posted?

The Witness: When posted—

Sam Ervin

The Court: He's saying when it's posted and Mr. Harrigan has a query of that.

What does it mean to you by the fact it's not posted?

The Witness: Anyone can hunt and fish on your land whenever they want to without your permission or trespassing.

Mr. Harrigan: That's all.

Oh, one other thing.

By Mr. Harrigan:

Q. Your farm, can you—do you have any sign out there in front of your farm to make it easily *identifiable*.

A. Yes. I have my name on the mail box and I also have a board with my name on it.

The Court: This would be the 49 series.
page 2388 } Mr. Harrigan: I offer it Your Honor.

Now, I show you 49F, is that the sign that you're referring to.

A. That's the board sign, yes, and also my name is printed on the mail, which is a large mail box, and it's also printed on the mail box.

Q. Now, where's the road that goes by in relation to this picture?

A. It goes right—

Q. (Interposing) Would you be standing in the road when you took that picture or close to it?

A. I didn't take the picture.

Q. I know that. I said—

A. (Interposing) Oh, here, yes. They were standing in the road when they took the picture.

Q. Now, did you become aware that John and Alice had any type of argument shortly before he left the house?

A. Yes, I was told that.

Q. By whom?

A. By Alice.

Q. Now, were you aware of that prior to knowing anything about this Rockwell affair or John being arrested?

A. Yes. I asked her where John was and she
page 2389 } said they had an argument and he took a walk.

Q. Now, when John and Alice came back in the house that morning, did she bring anything with her, any food?

Sam Ervin

A. Yes. The last time she brought a chicken which she cut up and put in an aluminum pan and set on the stove to soak I guess, or whatever you're supposed to—it was in a pan of water, in an aluminum pan and set there and then after this it wasn't cooked and it set there until about 9:00 o'clock that night and my wife came up from down in the country. It had been sitting there in that aluminum pan and all that day and she was afraid to use it and she threw it out and didn't even cook it.

Q. Was that chicken supposed to be for lunch, do you know?

A. I presumed she was going to cook it for dinner. It wouldn't have been time to cook for lunch.

Q. All right.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

Q. Now, down there on your farm, Mr. Ervin, did you have a cap and ball pistol?

A. Yes.

page 2390 { Q. Whose pistol was that?

A. Mine.

Q. Was that one of the ones you named?

A. I've got two cap and ball pistols.

Q. Do you have them both down there?

A. Part of the time they were both down there—

Q. Had you—

A. (Continuing) One is a confederate gun that my grandfather owned and it doesn't shoot. It was down there all the time.

Q. Now, in July of 1967, what guns were there?

A. In July? Well, the cap and ball was there in July, both of them.

Q. And the other guns you named?

A. Yes. Well—I don't know whether it—I believe the twenty-two was down there. I don't believe the twenty-five was.

Q. Now, were you there when John was target shooting in July?

A. When—I—we have target practice down there quite a bit. Now, I've been there when John was target practicing

Sam Ervin

and I don't remember the date when we were target practicing.

page 2391 } Q. John's a pretty good shot?

A. Not too good. He didn't down there.

Q. Did you ever see him shoot a 7.63 Mauser?

A. No sir.

Q. When did John and Alice get married?

A. I don't know.

Q. Was it March the 2nd, 1966?

A. I don't know.

Q. You weren't at the wedding?

A. I was not.

Q. Were they married when Mark was born?

Mr. Harrigan: Your Honor, I don't see what the purpose of this is. I don't think it's going to add anything. He's just trying to embarrass Mr. Patler and Mrs. Patler. He's well aware that the first baby was perhaps born out of wedlock.

The Court: The objection is sustained.

Mr. Hassan: May I have an exception on that, Your Honor? This is a man who is so completely wrapped up in it at this time and yet he doesn't know the details at that time which is only two years ago and I think it's subject to cross examination. It's that type of a situation.

By Mr. Hassan:

page 2392 } Q. Now, did there come a time when some detectives arrived at your home with a search warrant?

Mr. Harrigan: Objection, Your Honor.

The Witness: Which home?

Mr. Harrigan: I object to that.

Mr. Hassan: On Lee Highway.

The Court: What is the basis of the objection?

Mr. Harrigan: It's already been ruled on once that there was an illegal search so I don't know where it's going to go when they arrived there.

The Court: What is the purpose, Mr. Hassan?

Mr. Hassan: Mr. Harrigan opened it up when he put the nine millimeter slug in on direct examination and I objected then.

Mr. Harrigan: It's not in evidence.

Mr. Hassan: He opened it up in his questions.

Sam Ervin

The Court: I think I sustained the objection on that.

Mr. Hassan: You did not, Your Honor.

The Court: Well, the nine millimeter slug or cartridge wasn't introduced was it?

Mr. Hassan: It was not but you allowed him to question the witness on it.

Mr. Harrigan: Not about any search of the page 2393 } house.

Mr. Hassan: I'm not talking about a search of the house. It's just to get oriented as to the date.

The Court: If that's the purpose, all right.

Mr. Hassan: That's not the only purpose, Your Honor.

The Court: Don't question about the nature of the search.

Mr. Hassan: I'm not questioning about the nature of the search.

Do you recall that?

The Witness: Yes.

By Mr. Hassan:

Q. Did there come a time when you took Detective Kadel in a room and showed him some of your guns?

Mr. Harrigan: Your Honor, I object. What he did and told Kadel and what he showed him is neither here nor there because I think it's been ruled on.

Mr. Hassan: I'm refreshing his recollection.

Mr. Harrigan: Well, it's been ruled on that they had no business in there in the first place.

Mr. Hassan: They were talking about his guns.

The Court: That's the nature of the guns and it's proper examination, and the objection is over ruled.

Mr. Harrigan: Exception.

page 2394 } By Mr. Hassan:

Q. Did there come a time when you showed Sergeant Kadel your guns?

A. No sir. There came a time when Sergeant Kadel searched my bedroom.

He said on the stand here that he never searched anything there. But he did search my room but he stated on the stand that he did not.

Q. Were you here when he said that?

A. Yes I was here when he said that, when he said that he did not take part of the search.

Sam Ervin

Q. Did he state the reasons why?

A. He said he was harassed from the time he went in there and he pointed out a young lady that harassed him who didn't speak two words to him while he was there.

Q. Did any other lady speak two words to him or more?

A. Yes.

Q. Did you speak any words to him?

A. Towards the last, yes.

Q. Did you—

A. (Interposing) After he threatened me, I did.

Q. Did you tell him that John left there at ten minutes past eleven in a huff and walked out after an argument with Alice?

A. Did I tell him what?

page 2395 } Q. That John had left the house at ten minutes past eleven after an argument with Alice?

A. No sir.

Mr. Hassan: No further questions.

The Court: Any redirect?

Mr. Harrigan: No, Your Honor, not right now.

I would like to reserve, keep Mr. Ervin available.

The Court: All right.

Mr. Ervin you're excused subject to recall.

Mr. Hassan: Could we have just a short recess, Your Honor?

If Your Honor please, the Court calls to my attention the fact that you did allow that in evidence, Defendant's Exhibit D. He offered it and it was admitted and it's the Defendant's Exhibit D.

The Court: It is in evidence?

Mr. Hassan: Yes sir.

Mr. Harrigan: Let's see if it is initialed.

The Court: Well, I stand corrected but you've proceeded with your line of inquiry until completed.

Mr. Hassan: It's initialed.

The Court: All right.

page 2396 } We'll take a short recess.

(Whereupon, a short recess was taken.)

Mr. Harrigan: We're ready, Your Honor.

The Court: Call the Jury in.

All right, Mr. Harrigan.

Alice Patler

Mr. Harrigan: Call Alice Patler.

Whereupon, ALICE PATLER was called as a witness on behalf of the Defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name please?

A. Alice Patler.

Q. And are you married?

A. Yes.

Q. John Patler is your husband?

A. Yes.

Q. Do you have any children?

A. We have two.

Q. And what are their names?

A. Mark and Nick.

page 2397 } Q. And how old is Mark?

A. Mark is three.

Q. How old is Nick?

A. He's one.

Q. Now, on or about August 25, 1967 where were you and your husband living?

A. At my father's home at 2522 Lee Highway.

Q. All right.

Now, was John there the night before?

A. Yes he was.

Q. All right.

Did you and John get up that morning?

A. Yes.

Q. Did there come a time—Was Mr. Ervin there?

A. Yes he was.

Q. Did there come a time when Mr. Ervin left in the morning?

A. Yes.

Q. And what type of a business does Mr. Ervin run?

A. He has a T. V. repair service and sales.

Q. Where is that located?

A. In the same building, 2522 Lee Highway.

Q. Downstairs?

page 2398 } A. Yes, in the basement.

Q. All right.

Alice Patler

Now, what time did Mr. Ervin get back from his errands approximately, if you know?

A. It was about 10:00 o'clock.

Q. All right.

Who was there when he got back?

A. My husband and my two children and myself.

Q. All right.

Now did there come a time when you left?

A. Yes.

Q. And who left with you?

A. My husband, myself and the two children.

Q. All right.

Do you have any type of a business?

A. Yes. We started a small mail order company.

Q. And what was the name of that?

A. The Bargain House.

Q. The Bargain House?

A. Yes.

Q. And what do you sell?

A. Towels.

Q. All right.

page 2399 } Now do you have any post office boxes?

A. Yes we do.

Q. And where is the post office box located?

A. It's in Falls Church.

Q. Now, on the morning of August 25, 1967, when you left did you drive or did you walk?

A. I drove.

Q. What car did you drive?

A. My father's Ford stationwagon.

Q. All right.

Now, where did you go first?

A. First we stopped at a gas station on Lee Highway at, I think it's Lincoln Street.

Q. Did you buy gas?

A. Yes we did.

Q. How did you pay for it?

A. With a credit card.

Q. Whose credit card?

A. My father's.

Q. Now I show you Defendant's Exhibit No. N.

Would you look at that?

Do you recognize that?

Alice Patler

A. Yes.

page 2400 } Q. Is that your signature on there?

A. Yes it is.

Q. Is this the credit card for the gas that you bought?

A. Yes.

Q. Now, how far is that gas station from your house?

A. Oh, it's just about maybe a mile and a half approximately I don't know.

Q. And approximately how long did it take to get from your house to the gas station to get your gas, do you know?

A. Well, it just takes a couple of minutes to get to the gas station and we had just been in the gas station about five minutes getting the gas.

Q. Then did there come a time when you left the gas station?

A. Yes.

Q. When you left the gas station, where did you go?

A. We went to the Post Office in Falls Church.

Q. Do recall what box number that is?

A. It's 565.

Q. And who opened that box?

A. My husband did.

Q. All right.

Now when you got there, what did you do?

page 2401 } A. He went in and got the mail out of the box and came back and I sat there and opened the mail that we had gotten.

Q. And why did you sit there and open the mail?

A. Well, we were wondering if there was any cash in the orders but it was all checks.

Q. All right.

And approximately how many letters did you, orders did you get?

A. About ten.

Q. Then did you find any cash in any of the orders?

A. No, it was all checks.

Q. All right.

Did there come a time when you left the Falls Church post office?

A. Yes.

Q. Now, where did you go from the Falls Church post office?

A. We went back to my house.

Q. And your house being 2522 Lee Highway?

Alice Patler

A. Yes.

Q. And who was there when you arrived back there?

A. My father was there.

Q. And what was the purpose of going back
page 2402 } to your house?

A. Well, we had to write a check for some cash
because we had several things to get.

Q. All right.

And where was your check book?

A. It was in the office in the house.

Q. All right.

Now when you arrived back there, did you—what happened? Did you immediately get your check book and leave?

A. No. I went in to write the check and at that time my father said he had to go across the street to the store and to wait there until he got back, to watch the store for him, and so I wrote the check out.

Q. Now, he said to watch the store for him. What did he mean?

A. There was no one there so I was to wait to see if anybody came in.

Q. He went to the store?

A. Yes sir.

Q. What store is that?

A. The Seven Eleven.

Q. Where is that located?

A. Across the way from us.

Q. How long does it take him to get over there
page 2403 } and get back?

A. I was probably in the house five minutes altogether writing the check and waiting for him.

Q. I see.

Now then, was John still there?

A. Yes, he was waiting in the car.

Q. All right.

Now, after your father came back to the house, did you again go out?

A. Yes, I went back out then and I gave John the check and he signed it.

Q. All right.

Now, who was driving the car?

A. I was.

Q. Does John have a license?

Alice Patler

A. No he doesn't.

Q. When you left the house on that occasion, where did you go then?

A. Then we went to the Fidelity National Bank at 14th and Courthouse Road.

Q. And that would be the bank right across the street over here?

A. Yes.

page 2404 } Q. And did you go into the bank—who went into the bank?

A. John went into the bank.

Q. And did he cash a check?

A. Yes.

Q. Now, I show you Defendant's Exhibit No. "O".

Is that John's signature and is that the check he cashed?

A. Yes.

Q. Now when you left the bank, where did you go then?

A. I went to the post office, the Courthouse station in Arlington.

Q. And had Mr. Ervin given you anything to mail?

A. Yes, he had given us a package.

Q. When you went to the post office, which post office did you go to?

A. The Courthouse station, Wilson Boulevard and Courthouse Road.

Q. And where is that, right across the street over here?

A. Yes.

Q. All right.

Now, where did you park the car?

A. I parked in the bank parking lot. It's in
page 2405 } the back of the post office.

Q. Who went into the post office?

A. John did.

Q. And who stayed in the car?

A. I did.

Q. Anybody else?

A. The kids.

Q. Now, did he mail the package?

A. Yes.

Q. And did he buy any stamps?

A. Yes he did.

Q. Now I show you Defendant's Exhibit M for identification.

Alice Patler

Do you recognize that?

A. Yes.

Q. Is that the receipt for the stamps?

A. Yes it is.

Q. Now when you left the Courthouse post office, where did you go then?

A. We went to the Arlington Paper Supply. It's on Lee Highway.

Q. And where did you park the car there?

A. I parked on North Monroe Street at the corner of Lee Highway and Monroe Street.

page 2406 } Q. And did you go in or did John go in?

A. John went in.

Q. Do you know approximately what time you arrived at the Arlington Paper Supply Company?

A. It was about 11:00 or just shortly after 11:00.

Q. All right.

About how long was John inside the Arlington Paper Supply Company?

A. About fifteen minutes.

Q. Do you know what he went in to buy?

A. Yes. He went in to buy some large envelopes.

Q. What do you use those for?

A. For the mail order business.

Q. For your mail order business?

A. Yes.

Q. And do you know of any reason why it took him fifteen minutes to buy envelopes?

A. Well, it always usually takes about that long because they have to count them out and sort them and so forth.

Q. Have you purchased envelopes in that store before?

A. Yes I have.

Q. Did John bring the envelopes back out?

A. Yes he did.

page 2407 } Q. Now I show you Defendant's Exhibit P which is a receipt for a hundred and fourteen envelopes.

Do you recognize that?

A. Yes.

Q. What is that?

A. That's a receipt for the paper supplies.

Q. Now, when you left the Arlington Paper Supply Company, where did you go then?

Alice Patler

A. Well, we started to go home. We got all the way home and started to go in the driveway and I realized I wanted to get something from the Safeway so we drove to the Safeway in Clarendon which is just a few blocks from the house.

Q. And who went into the Safeway?

A. John did.

Q. And what was he going in after?

A. Some chicken.

Q. All right.

And did he go in the Safeway and bring out the chicken?

A. No. He went in first and then I had told him to get a whole chicken. He went in first and then came back out and he told me, he asked me if I would rather have
page 2408 } choice portions or the whole chicken and I said
the portions so he went in and got a portion
and came back out.

Q. Did he bring the parts out with him?

A. Yes.

Q. From there where did you go?

A. We went home.

Q. You went home?

A. Yes.

Q. And do you know approximately what time you arrived back home?

A. It was about twenty, about twenty 'til twelve because I was thinking about preparing lunch and how much time I had to prepare lunch.

Q. All right.

Now, when you got home, did John do anything?

A. We had a box of groceries on the kitchen floor that my father had brought in from the country and he carried them down in the basement.

Q. You saw him take those down?

A. Yes.

Q. And did there come a time—all right.

Did there come a time shortly after that where you and John had an argument over something?

page 2409 } A. Yes.

Q. And would you tell how that developed?

A. Well, he had just disciplined Mark, the three year old. He had told Mark to pick up something and Mark didn't so he made him go to bed. He sent him up to his room. I didn't think it was right so we got in an argument about that.

Q. And did John get mad?

Alice Patler

A. Yes, he got mad and we started arguing back and forth.

Q. What did he do?

A. Well, he went in the bathroom and we were arguing while he was still in the bathroom and he came out while he was in the bathroom and he came out wiping his hands on a towel and we were still arguing and finally he just stormed out of the house.

Q. And approximately what time was it that he stormed out of the house?

A. Well, it was only about maybe five or ten minutes after we got home.

Q. Which would make it roughly what time?

A. Oh, about maybe a quarter of or ten of, something like that.

Q. Now did you remain home?

page 2410 } A. Yes I did.

Q. And when he stormed out of the house, did he take any cars with him?

A. No, he walked.

Q. How many cars did you have at your disposal there?

A. Well, we have the one car and then my father has two trucks.

Q. All right.

And did John take the car or the truck?

A. No.

Q. Now, when was the next time that you heard from John?

A. He called me from the police station.

Q. What time was that, do you know?

A. I think it was about a quarter 'til two, probably about fifteen 'til two.

Q. And do you recall what he told you at that time?

A. He told me that they were holding him at the police station and they wouldn't tell him why or what he was supposed to have done or anything.

Q. All right.

And did you get in touch with anybody, find out about it?

page 2411 } A. Well, I asked him what should I do, should I get an attorney or what and he said, well, I guess so. So I called Mrs. Lane.

Q. And did you get in touch with Mrs. Lane then?

A. Yes.

Q. All right.

And what did Mrs. Lane tell you to do?

A. Well, I asked—she said she would go right over to the

Alice Patler

police station and I asked if I could go with her and she said they wouldn't let me, why don't you go to my office and wait there.

Q. Did you do that?

A. Yes I did.

Q. Did there come a time that you found out what they were holding John for?

A. Yes.

Q. Now, did you see John that afternoon?

A. Yes, I did.

Q. What time?

A. I don't remember. I had been over at Mrs. Lane's office and she called and told me to come over and I don't remember what time it was.

Q. Where was John?

A. He was at the Detective Bureau.

page 2412 } Q. In the police station?

A. Yes.

Q. All right.

And did you see him over there?

A. Yes.

Q. Did you notice anything unusual about his clothes?

A. No.

Q. Then did you notice his pants?

A. Yes.

Q. Were they wet?

A. They didn't appear to be wet.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

Q. Mrs. Patler, what did you do with the ten checks that you received from the post office box?

A. I deposited them.

Q. The same day?

A. No.

Q. You—

A. (Interposing) Probably, I probably didn't deposit them until the next day or something.

Q. You didn't take a deposit with you to the
page 2413 } bank to cash it when you went to the bank to
cash a check?

Alice Patler

A. No sir.

Q. You say John has no driver's license?

How long has he been without a driver's license?

A. I really don't know.

Q. Have you seen him drive a Mustang?

A. Yes.

Q. You have seen him drive.

He can drive an automobile?

A. He can drive but he wasn't driving the day of the 25th.

Q. Now, on your estimate on time, when did you reconstruct these times for the first time?

A. Well, when the investigators came over a week later after it happened and we, we left about 10:00 o'clock, about the same time that I had said we left before and we went through the general run.

Q. Who was the investigator?

A. There was two of them, Mr. Hunt and Mr. Shehee.

Q. That was a week later?

A. Yes.

Q. Now, could you be mistaken about your time on the 25th by a few minutes one way or the other?

page 2414 } A. Well, I know the time we left. It was just a few minutes after 10:00 and I know what time we returned but in between places, I could be but I know the time we left.

Q. You're sure of the time you left?

A. Yes I am.

Q. And you estimated it with the help of the two investigators?

A. Well, I just drove and they timed it.

Q. When you first talked to John, did you know Lincoln Rockwell had been shot?

A. Yes I did.

Q. Did you tell John that?

A. I don't recall. I know I was very upset. I don't recall.

The Court: Mr. Hassan, you're referring to the telephone call?

Mr. Hassan: At 21:45 on the 25th.

Mr. Harrigan: Well, how—

Mr. Hassan: (Interposing) It's the only one she testified to.

Alice Patler

By Mr. Hassan:

Q. Now what time did you see him in the Detective Bureau?

A. I don't know because I was sitting over in page 2415 } Mrs. Lane's office waiting for her to call me.

Q. Was it late in the afternoon?

A. It was. I'd say around 4:00.

Q. Around 4:00?

A. But I'm not sure because I didn't have an opportunity to look at a clock or watch or anything during that time.

Q. And you didn't see him any earlier than that?

A. Well, I don't know the time that I saw him.

Q. You were pretty upset weren't you?

A. I was very upset.

Q. And you didn't really notice his clothes at all, did you?

A. Well, I noticed because I went into the room and I hugged him and I know his shirt was not wet and I would have noticed if his pants had been wet and they did not appear to be wet.

Q. You don't know whether they had been wet before you saw him or not, do you?

A. I have no way of knowing that.

Mr. Hassan: No further questions.

The Court: Any redirect?

REDIRECT EXAMINATION

By Mr. Harrigan:

page 2416 } Q. Now, you did make a rerun of this whole trip, didn't you?

A. Yes I did.

Q. And who was with you when you made the rerun?

A. The two investigators, Mr. Hunt and Mr. Shehee.

Q. All right.

When you made this rerun, did you make it in the same order of stops that you stopped on the 25th of August?

A. Yes, we went through the whole run exactly as I told them.

Q. All right.

Did you—when you made this run did you park in the identical parking lanes as much as possible?

A. Did I park in the identical parking lanes as much as possible? Yes.

Q. Did you drive at the same speed you normally drive at?

Alice Patler

A. Yes.

Q. Did you attempt to stay at each place for the time that you thought you stayed at it?

A. Yes.

Q. And you didn't know, have any idea how the figures were coming out, did you?

page 2417 } A. No I didn't.

Q. And how long did—what day was this that you made this, what day of the week?

A. It was on a Friday.

Q. It was on a Friday also?

A. Yes.

Q. When you made this run, to the best of your recollection, was the traffic similar Friday the 25th?

A. Yes, it was just about the same.

Q. The same.

And was it September 1st when you made this run? One week later?

A. Yes, it would have been the week I suppose of September 1st, one week after.

Q. And was the weather conditions similar to the best of your knowledge?

A. Yes, I think so.

Mr. Harrigan: That's all.

Mr. Hassan: I have a little further cross examination at this time.

The Court: It will have to be limited to that rerun.

Mr. Hassan: Absolutely.

page 2418 } RE CROSS EXAMINATION

By Mr. Hassan:

Q. On the rerun Mrs. Patler, how many letters were in the mail box in Falls Church?

A. Well, they had asked me before how many letters I had gotten the week before and I told them ten so they just told me to open just about the same amount of letters that I opened before.

Q. Did you go in the post office and open the mail box?

A. Yes.

Q. What did you get out that day?

A. I think it was just about the same because the investi-

Alice Patler

gator asked me about it because usually these days of the week, the mail is usually about the same, the heavier days.

Q. Did you buy the same amount of gasoline?

A. No, I didn't but they asked me about how long I had stayed there.

Q. But you didn't buy the same amount of gasoline.

You have no credit slip for that day?

A. No, I don't.

Q. Did you cash a check at the bank?

A. No, I didn't.

Q. Did you mail a package from the post page 2419 } office?

A. No. We just used approximate times of what I thought it was the week before.

Q. You estimated the time based on your recollection of the week before?

A. Yes.

**FURTHER EXAMINATION BY
COUNSEL FOR THE DEFENDANT**

By Mr. Harrigan:

Q. Did you stop at the gas station in the same lane?

A. Yes. They asked me which pump I had stopped at and so I stopped there.

Q. And did you wait until sixteen gallons of gas could have been pumped or estimated?

A. Yes, we estimated it.

Q. When you timed the check, did somebody go physically into the bank, go up to the counter, and come back out and get in the car?

A. Yes.

Mr. Harrigan: That's all.

The Court: Thank you, Mrs. Patler, you're excused.

Mrs. Patler you may remain in the Court Room.

Mr. Harrigan: Our next witness is going to be the defendant, John Patler, and it's twenty-five after now.

The Court: All right.

page 2420 } Ladies and gentlemen, we will recess until
1:30.

John D. Patler

(Whereupon, the hearing was recessed, to reconvene at 1:30 p. m.)

page 2421 } AFTERNOON SESSION (1:30 p.m.)

The Court: Mr. Patler, before you take the stand I would like to explain to you that you do not have to testify and that, if you do not testify, no presumption attaches against you because of your failure to testify.

You're taking the witness stand must be voluntary on your part.

If you do take the witness stand, anything you say may be weighed by the Jury for or against you.

Do you understand that?

The Defendant: Yes sir.

The Court: And have you talked to your attorneys about it?

The Defendant: Yes sir.

The Court: All right.

Call the Jury.

Whereupon, JOHN D. PATLER, the defendant, was called as a witness and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name please and your address?

page 2422 } A. My name is John Patler. I live at 2522 Lee Highway.

Q. And are you married?

A. Yes sir.

Q. What's your wife's name?

A. Alice.

Q. Do you have any children?

A. Yes sir.

Q. How many?

A. We have two children, little boys, named Nick, one year old and another little boy named Mark, three years old.

Q. Now, does anybody else live at that address with you?

A. Yes sir.

Q. Who?

John D. Patler

A. My father-in-law, Mr. Ervin, my mother-in-law, Mrs. Ervin, and my two little brothers-in-law.

Q. Now, calling your attention to the evening of August the 24th or early morning of August 25, where were you at that time?

A. At home sir.

Q. And what time did you get up?

A. We were awakened by the little baby, Nick. He wakes us up every morning and we just get up and
page 2423 } get dressed and have breakfast.

Q. Was Sam there, Sam Ervin, your father-in-law?

A. Yes sir.

Q. Did there come a time when Mr. Ervin left that morning?

A. Yes sir.

Q. And do you recall approximately what time that was?

A. No, it was sometime in the morning.

Q. All right.

Now, who was there when he left?

A. Alice and I and Mark and little Nick.

Q. Now, did he come back?

A. Yes sir.

Q. Approximately what time did he come back?

A. About 10:00 o'clock.

Q. Now, were you and Alice waiting for the car?

A. Yes sir.

Q. Do you have a driver's license?

A. No sir.

Q. Do you know how to drive?

A. Yes sir.

Q. Now, after Mr. Ervin came back, did you and Alice go anywhere?

page 2424 } A. Yes sir.

Q. And did anybody go with you?

A. Little Nick went with us.

Q. All right.

Now, approximately what time did you leave the house that morning?

A. About 10:00 o'clock.

Q. Where did you go?

A. To pick up the mail.

Q. Where?

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A. In Falls Church.

Q. Now, was this a common thing that you and Alice did periodically?

A. Yes sir. We did it every morning.

Q. All right.

Now, whose car did you go in?

A. My father-in-law's car.

Q. And when you left the house, where did you first stop?

A. The first place we went to was to get some gas.

Q. Now, I show you Defendant's Exhibit No. N.

Do you recognize that exhibit?

A. Yes sir.

page 2425 } Q. Does it have your wife's name on it?

A. Her signature is on it.

Q. Now was that the gas receipt for that gas?

A. Yes sir. We got a lot of gas that morning.

Q. All right.

Now, where is that gas station located?

A. On Lee Highway.

Q. Now, after you left the gas station—did you see Alice sign that receipt?

A. Yes sir.

Q. Now, after you left the gas station, where did you go then?

A. We went to the post office.

Q. Where is that?

A. In Falls Church.

Q. And who went in the post office?

A. I did.

Q. Was there any mail there?

A. Yes sir.

Q. How much mail?

A. A batch of mail.

Q. All right.

Now, did you open any of the mail?

page 2426 } A. No, I don't. Alice does.

Q. What did you do with the mail?

A. Just turned it over to her.

Q. Where was she, in the *the* car?

A. Yes sir.

Q. Did she open any of it in the car?

A. Yes sir.

Q. What were you looking for?

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A. Money.

Q. What kind?

A. Cash.

Q. Was there any in there?

A. No sir.

Q. Now, did you leave that vicinity of the post office?

A. Yes sir.

Q. And where did you go?

A. We went from the post office and we went back home. We went back home to pick up a check that Alice wrote out.

Q. And when you got back home, who was there?

A. Mr. Ervin was.

Q. And did you immediately leave or?

A. No. We waited around because he had to go across the street to get something.

page 2427 } Q. Across the street where?

A. Seven Eleven.

They were having trouble with the sewer system and there were also a couple of guys in the backyard digging up the yard at the time, too.

Q. O. K.

And did Mr. Ervin come back from the Seven Eleven?

A. Yes sir.

Q. Now, after you—after Mr. Ervin came back, then where did you go?

A. We went to the bank.

Q. We being you and ?

A. Alice, myself, and Nick.

Q. What bank?

A. Fidelity Bank right here at the Court House.

Q. The corner of the Court House?

A. I don't know the exact location. It's the first time I ever went there.

Q. O. K.

Now, I show you this check dated August 8, or August 25, 1967, \$15.00, Defendant's Exhibit "O".

Would you look at that check and that signature and tell us whether that is your signature?

page 2428 } A. That is my signature and my wife's handwriting filled out the rest of it.

Q. Who cashed it?

A. I did.

Q. Now, after you cashed the check, where did you go then?

A. We went to the post office.

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Q. What post office?

A. A different one this time.

Q. The Court House post office?

A. Yes sir.

Q. Did you buy some stamps?

A. Yes sir.

Q. Now, I show you Defendant's Exhibit M.

Do you recognize that?

A. Yes sir.

Q. Is that the receipt you got for the stamps?

A. I remember it because of the price also. I got two rolls, two \$5.00 rolls of five cent stamps and one hundred ones and fifty cents was to mail a package.

Q. Whose package was that?

A. Mr. Ervin's.

Q. You had better speak up.

page 2429 } A. Mr. Ervin's.

Q. Now, after you left the post office, where did you go?

A. After we left the post office?

Q. Where did you—yes, after you left the post office, where did you go then?

A. I went to buy some envelopes.

Q. Where?

A. At the Arlington Paper Supply Company.

Q. Now, have you been in there on many occasions?

A. Yes sir.

Q. All right.

And do you know Mrs. Luba?

A. I didn't know her name until she came to Court but I know her face.

Q. You know her face?

A. Yes.

Q. Was she there when you were there?

A. Yes sir.

Q. All right.

And I show you Defendant's Exhibit P which is a receipt from the Arlington Paper Supply Company for envelopes for 3.75.

page 2430 } Can you identify that?

A. Yes sir.

Q. What is that?

A. That's the receipt the woman gave me and she doesn't

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know my name but she knows me as Mrs. Ervin's, Mr. Ervin's son-in-law and she also filled out the ticket Ervin T. V. but this is the receipt she gave me.

If I remember correctly, there was something about the price that day. It's marked here. She undercharged me. It says 3.55 and it was really 3.75 and my mother-in-law corrected her. I recall that there was a question about price too.

Q. Now, approximately what time did you leave Arlington Paper Supply Company?

A. Let's see. I have to think. It could have been around 11:00 o'clock. It couldn't have been before that, I'm sure.

Q. All right.

When you left the Arlington Paper Supply Company, where was Alice? Did she go in with you or did she stay in the car?

A. Well, it all depends upon how we come down the street.

Sometimes she parks in front of the place but
page 2431 } there was no parking permit there and if we
think we can get away with it, we park and run
in and get away with it sometimes and then we park around
the corner sometimes and there's a electrical equipment warn-
ing "high voltage" and this is the place she usually parks
and waits for me.

Q. After you left there, did you then go somewhere else?

A. Yes, we started back home.

Q. Did you go right straight back home?

A. Well, we got almost home but we remembered we had to
pick up some chow so we—

Q. Where did you go?

A. We went to the Safeway in Clarendon.

Q. Who went to the Safeway?

A. I did.

Q. What were you after?

A. Chicken.

Q. What did you do? Tell us what you did.

A. Well, I went in and I think Alice had asked me to get a
whole chicken. I thought why spend money for a whole chick-
en because you have to cut off the end and all that, why not
get a bunch of breasts or legs and get more for your money so

I came out and mentioned that to her and she
page 2432 } went along with it and I went back in and
bought the chicken.

Q. All right.

After you bought the chicken, you went back to the car?

A. Yes sir.

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Q. Where did you go *there*?

A. We went back home.

Q. About what time did you get back home?

A. I would say maybe twenty after, 11:30, somewhere around there.

Q. Now, who was back there when you got there?

A. I think Mr. Ervin was there and Mark was there and the fellows digging up the yard.

Q. Now, what did you do after you got back there?

A. I took—Alice asked me to take a box of groceries down to the basement.

Q. Did you take the groceries down?

A. Yes sir.

Q. And what developed after that?

A. Well, we got into a little argument.

Q. Over what?

The Court: You'll have to speak up.

The Witness: We got into a little argument
page 2433 } about Mark.

By Mr. Harrigan:

Q. Now, you got in an argument about Mark?

A. Yes sir.

Q. Did there come a time when you left the house?

A. Yes. Well, we—I just got a little hot at the collar and we argued back and forth and she thought the discipline was a little too severe on him and that I was a little rough on him because I jerked him by his arm and everything so she got angry about that and words passed and I just stomped out of the house.

Q. O. K.

Now, when you went out of the house, what clothes were you wearing?

A. I was wearing those clothes there (indicating).

Q. That would be—I show you Commonwealth's Exhibit 8B which is a yellow shirt. Can you identify that?

A. Yes sir.

Q. Is that your shirt?

A. Yes sir.

Q. And I show you 8D which is a pair of pants. Can you identify that?

A. Yes sir.

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page 2434 } Q. That's the pants?

A. Yes sir.

Q. I show you these shoes which is 8E.

A. Those are my shoes.

Q. Now, I show you this white towel. Does that look familiar?

A. Yes sir. It looks like the towel I had when I left the house.

Q. Now, what color socks did you have on?

A. I had on dark blue socks, the same kind I'm wearing today.

Q. Take a look at these, 8F-1.

Anything like those?

A. They look a little darker than the ones I'm wearing. I think they are though.

Q. You think?

A. Yes sir.

Q. Now when you left the house, did you drive or did you walk?

A. I walked, sir.

Q. And tell us in your own words from the time you left the house where you went to the best of your recollection up until the time you met Detective Davis?

page 2435 } A. O. K.

I forget what street I took to get to Key Boulevard. I was walking along Key Boulevard and then from Key Boulevard I went, I was walking pretty rapidly because, because I was kind of upset and everything because of the argument. I walked along Key Boulevard and then—

The Court: (interposing) You say you were a bit upset because of the argument?

The Witness: That's why I don't remember the street I went on, how I got to Key Boulevard.

I remember that I was walking along Key Boulevard and thinking about things and everything and then I went down to Washington Boulevard and from Washington Boulevard to Fairfax Drive and then I walked along Fairfax Drive and then Fairfax Drive come to a dead end and there's a bowling alley on the right and I went across, if I remember correctly, I wasn't paying much attention to where I was going and I went to a wooded area and I think I crossed the wooded bridge, I'm not sure, but there's a path there that leads from the dead end of Fairfax Drive to George Mason Drive and

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that leads to Washington Boulevard and I just walked on Washington Boulevard, on the right hand side, and I just kept walking along and somewhere along the way I just began to realize how foolish it was, the argument, and page 2436 } everything so I thought about cutting right over to Lee Highway and walking back but I thought because I thought—but I thought that was foolish too, and I considered Westover to call my wife and have her pick me up but I thought she may be mad at me and everything so I thought I would take a bus back and apologize and say I was sorry and get it over with so I crossed over the street.

By Mr. Harrigan:

Q. Crossed what street?

A. Back across Washington Boulevard.

Q. You crossed back over Washington Boulevard.

O. K. Go ahead.

A. Then I waited at a bus stop for a few seconds and I just got impatient and went to the next one and then I walked to another bus stop and I was picked up.

Q. All right.

Now, between the time you were walking between bus stops, did you ever get off of Washington Boulevard?

A. Yes sir.

Q. When was that?

A. When I got—I left it at the second bus stop.

Q. Tell the Jury what happened?

A. I don't remember if I went between any page 2437 } buildings but I did go into a wooded area.

Q. Is that right?

A. Yes sir.

Q. Why?

A. I had to urinate.

Q. Now, how long did you stay in there?

A. Just a few seconds.

Q. Then where did you go?

A. And then I just went to that same bus stop I was at and then I just, you know, looked back kind of pacing by the bus stop. I just went to the next one.

Q. And is that Harrison Street and Washington Boulevard?

A. Yes sir.

Q. And do you remember when Detective Davis drove up?

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A. Yes sir.

Q. What were you doing then?

A. Just standing at the bus stop waiting for a bus.

Q. And did any bus come by then?

A. Well, just as his car pulled up and he got out, a bus slowed down to pick me up and he waved it on and I didn't understand what was happening at all. I didn't know what this guy was.

Q. Was it a marked car?

page 2438 } A. No sir. It was a plain colored car.

Q. Do you know Inspector Cole?

A. Yes sir.

Q. How many years have you known Cole?

A. I've known Inspector Cole since—when I got out of the Marine Corp in 1960.

Q. A number of years, right?

A. Yes sir.

Q. Now, there's been testimony here that you ran from Inspector Cole. When was the first time you saw Inspector Cole?

A. The first time I saw Inspector Cole they had me up against the car and they were searching me and a policeman was behind me with a shotgun and there was about six or seven police cars, marked ones, unmarked ones, and Inspector Cole drove up and got out of his car and they had somebody ask me some questions and he looked at me and he nodded and I said what's this all about Inspector. I asked him the question and he never answered. He never spoke to me.

Q. Did he hear you do you know?

A. I think he heard me.

Q. He didn't respond at all?

page 2439 } A. No sir. He never came around the car. He just got out of his car and talked to somebody and looked over in my direction and nodded an affirmative and got back in his car.

Q. Now then, did you have any conversation with Detective Davis as to what this was all about?

A. Yes sir, I did. I asked him what it was all about, I kept asking and he didn't give any reply and he put my hands behind my back and handcuffed me and put me in the back of the police car.

Q. Speak up.

A. He put me in the car with my hands behind my back on

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the right hand side of the car, not the drivers side, the rear opposite drivers side.

Q. All right.

Then where did they take you?

A. They took me to the shopping center.

Q. And where did they drive you around by the shopping center?

A. We parked right in front of the shopping center.

Q. All right.

Could you see anything?

A. Yes sir.

Q. What did you see?

A. I saw a man lying down there on the pavement page 2440 } ment.

Q. Did you know who it was?

A. Not at that time.

Q. Did anybody tell you?

A. No. I kept asking why I was being arrested and what this was all about.

Q. Did Davis have his radio on or off?

A. He shut his radio off. I don't know why.

Q. And then did you—

A. (Interposing) Well, let me just tell you one thing. We parked there for about thirty seconds or so and some policeman ran up and kept saying get him out of here, get him out of here. That's why I thought I might have recognized one of the policemen in the photo.

Q. And then did they drive you out of there?

A. Yes. They drove me away.

Q. Where did they take you?

A. They took me to the police station.

Q. On the way down to the police station, did they tell you what was going on?

A. No sir.

They finally did tell me that I was a suspect of a felony and I asked them what felony and he wouldn't tell me and he said you have to have your rights read to page 2441 } you and then we'll tell you.

Q. Where did they take you?

A. To the third floor, Detective Bureau, and put me in a little room.

Q. And did there come a time when they took you over and advised you of your rights?

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A. Yes sir.

Q. And they told you up to that point what they were holding you for?

A. Nothing. They didn't tell me anything, not at all.

Q. How many times did you ask them?

A. I was repeating it all the time.

Q. Then they read you your rights, is that right?

A. Yes. This fellow with a goatee, I think his name is Gannon, I found that out later on.

He read me a little sheet of paper and they asked me—they told me I had a right to counsel and when he asked me that I said what for and he kept repeating my rights and said I had such and such a right and asked if I understood and I said I didn't know what was happening and I wanted to know what I was being held here for and I wanted to know what I was being arrested for.

Q. Didn't the Special Justice tell you?

page 2442 } A. No. That's why I didn't sign that paper.

Q. Did the Special Justice inform you why?

A. No.

Q. Did the detective then inform you what was going on?

A. No.

Q. Did they give you an opportunity to make bail for this non-existent charge?

A. No sir.

Q. Did they tell you anything about bail?

A. No sir.

Q. Did they tell you anything about your right to bail?

A. No sir.

Q. All right.

Now, after you were read these rights, did you make any telephone calls while you were over to the Violations Bureau?

A. Yes sir. Then, finally they let me call my wife.

Q. Did you get in touch with her?

A. Yes sir.

Q. And she was home?

A. Yes sir.

Q. After that was over, where did they take
page 2443 } you then?

A. Back over to the Detective Bureau.

Q. And had they told you after they got you back there what you were arrested for?

A. No sir.

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Q. Well, how long was it before you knew what the charge was?

A. Not until my wife told me and even then they wouldn't tell me. I mean my wife told me. Nobody would tell me. Then I had a knowledge of what had happened.

Q. Now, do you recall how long you were over there before they even got a Warrant for you?

A. It seemed like a long time.

Q. Now, did they ask you any questions?

A. Yes sir.

Q. And did you give them the answers?

A. Yes sir.

Q. Did you tell them at that time about what time you had left home?

A. Yes. I told them I thought I left home about noon.

Q. And at the time they were asking you these questions, had you been informed at that time what they were holding you for?

A. No.

page 2444 } Q. Now, did there come a time then when finally Mrs. Lane did come over?

A. Yes. Mrs. Lane came over and introduced herself to me.

Q. All right.

Now, you were a member of the Nazi Party, is that right?

A. Yes sir.

Q. Now, Mr. Hassan has introduced certain evidence—before I get into that—here's this application that was made out to the post office, Commonwealth's Exhibit 67, to the post office in Falls Church.

Who made that up?

A. I did, sir.

Q. Now, it's got a Marine number up there?

A. 1692284.

Q. What is that?

A. That's my Marine Corp serial number when I was in the Marine Corp.

Q. Did you have a card with that?

A. Yes sir. They asked me for identification and I gave them my draft card and I showed them—it's a little Marine Corp discharge card that you get which shows

page 2445 } you're discharged and that you served under honorable conditions in the Marine Corp and I had my serial number on it so they jotted that down.

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Q. Now, I show you Commonwealth's Exhibit No. 58B which purports to be a letter to you from Mat Koehl by order of Rockwell which alleges certain charges against you.

Do you recognize that?

A. Yes sir.

Q. Now, with regard to that first item, what is that first item, A?

A. It says "on 30 March 1967 you were relieved of command of the printing plant and transferred to the barracks in Arlington."

Q. Why? What is "A"?

A. "For readily abandoning your command for periods of almost a week with neither notice or permission of the officer in charge."

Q. All right.

Now, with regard to that particular allegation, would you tell the Jury the background of it, how that developed and what that means?

A. It's true that I had left many times while I was—I left the Party on many occasions. In fact, about page 2446 } every weekend or whenever I could get a chance to go stay with my wife and kids and he didn't particularly like the idea and we had disagreements about that. He wanted me to be full time for him and the Party and not have any outside interests but I felt I had a moral obligation to my wife and kids so that was one of the big disagreements between us.

Q. And did you have some disagreements with Rockwell concerning this absenteeing yourself on many occasions?

A. Yes sir.

Q. And did Rockwell know where you lived here in Arlington?

A. Yes sir.

Q. And did he know where you stayed occasionally at the farm?

A. Yes sir.

Q. Did he know where the farm was?

A. Yes sir.

Q. How many disagreements would you say you had had regarding your staying with the family when you should have been working for Rockwell?

A. Just continuously. It's just that this was a steady thing.

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Q. And did he allege that he couldn't find you
page 2447 } on various occasions when he attempted to?

A. Yes. He said one time—and I told him—I told him in confidence where the farm was located and everything and he said he had sent some people down there to look for me and I got into an argument with him about that because I didn't want to expose my in-laws to any embarrassment.

Q. How many times did he send people there to look for you?

A. He told me that he had sent people down there on two different occasions.

Q. Were you down there when anybody came down?

A. No, no sir.

Q. Do you know who he sent down?

A. No sir.

Q. All right.

Now, did there come a time when your father-in-law had a heart attack?

A. Yes sir.

Q. Around what time was that?

A. I think it was the beginning of the year 1966.

Q. Was it '66?

A. Yes, I'm pretty sure it was '66.

Q. All right.

page 2448 } Now, as a result of that heart attack—

A. (Interposing) Wait. No, no, it was in '67. I think it's '67.

Q. All right. '67?

A. Yes. I remember now. I recall something else.

Q. All right.

As a result of your father-in-law's heart attack, how did that help create friction between you and Rockwell?

A. Well, at the time I was in Chicago and we were organizing a rally and a protest march against the integration people and Rockwell was arrested and he had to appear in Court for trial so I told him that I wanted to be excused, that I wanted to get back to Arlington because my in-laws had never asked me for anything as long as they had known me and this is the first time they had asked for me and they never asked me before. They tolerated this business of me being in politics and stuff like that and had put up with it.

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One time they asked me for help and this one time I wanted to help and get there.

Rockwell told me if I would just stay over a couple more days for the trial, because he needed me, he would fly me back from Chicago to Arlington. Well, the time came to fly me back and he tried to get me to take the bus back which
page 2449 } would take longer and he tried—I was angry about that and finally I did get him to keep his word and he was angry about that.

I can go further than that. I remember there was a snow storm when I got back—no there wasn't a snow storm then but after I returned—I got a bus out of Arlington to Staunton, walked across the City of Staunton, hitchhiked from Staunton to McDowell and walked the last ten miles to the farm to help Alice take care of the twins and the farm.

Q. Were there other difficulties?

A. Yes sir.

Q. You mentioned other difficulties in there. Why don't you give us a little background on those?

A. Let me read this.

I notice there's a mention here, well, he talked about—well he mentioned here about me referring to other Party members as blue eyed devils but how that originated was we were all sitting at supper one night and I happened to remark that Elijah Mohammad, head of the Black Moslems, said that only pigs and blue eyed devils ate green peas. This is something he wrote in his publication for Black Moslems and I thought it was hilarious and somehow the word got back to the Commander that I was referring to white
page 2450 } people as blue eyed devils and I denied the allegation and said that wasn't true.

Q. In fact, your wife has blue eyes?

A. Yes and my mother and my brother.

Q. All right.

Now, what about the other allegations in there?

A. Oh, he said I was remiss in my duty in production. I was. But the reason was that I was spending more time with my wife and kids than I was the Party. Of course, when I was in Chicago, too, I couldn't have all my art materials to do the work required.

Q. Now, also—

A. (Interposing) He alleges here that I accused him of being a liar, which is true. I said that he lied in some of the

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things he said about me. He said I ran out on him in Chicago but I didn't.

Q. Is that the same day you were out there?

A. Yes, I stayed over for the trial and he said I didn't and I thought it was dishonorable because he took a vacation on Party funds and everyone in the Party don't receive a salary and I thought it was more idealist and sort of like monks in a monastery and also he broke into my room and went through my stuff and my wife's stuff and car-

page 2451 } ried it back to Arlington.

Q. Did he, in fact, take vacations on Party funds?

A. Yes sir.

Q. How many times did he do that to your knowledge?

A. I know three specific cases.

Q. And was this a bone of contention with you?

A. Yes it was because we didn't have too much to eat.

Q. Just tell the Jury what you usually ate up there. What kind of food used to be served?

Mr. Hassan: This is kind of leading, Your Honor.

The Witness: Mostly beans and corn bread, very inexpensive stuff, things like that. It wasn't too healthy a life. I mean mostly everybody that was there was there out of idealism.

By Mr. Harrigan:

Q. Did Rockwell eat the same food you people ate?

A. Some of the time and other times he didn't.

Q. Where did he eat most of the time?

A. Up in his room and he had Barbara von Goetx to cook him up some meals and things like that.

Q. All right.

Now, as a result of some of these difficulties was there any —you did eventually leave the party, is that

page 2452 } right?

A. Yes sir.

When I just reached the point where I became disillusioned with the man and I wanted—I just felt a great obligation towards my wife and my family. I mean Alice had put up with all kinds of things by me and stuck by me inspite of everything whereas my first wife hadn't.

Q. You were married before?

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A. Yes sir. I was married before. Alice is my second wife and it wasn't an instantaneous thing it was a gradual thing. I mean just over a period of a year I just slowly lost my spirit.

Q. All right.

Now did you, you say that Rockwell broke into your room in Spotsylvania?

A. Yes sir.

Q. Was this during one of the times you were not down there but you were with your family?

A. Yes sir.

Q. You were with your family.

And will you tell us who broke in down there and what transpired?

A. I was told the people present were Dragger, Parsons, Commander Rockwell, and he's the one that
page 2453 } broke the lock and went into my room.

Q. Did you have a lock on your room?

A. Yes, I had a lock on the door.

Q. What did he take out?

A. Just about everything. I would say about eighty per cent of the stuff.

Q. Where did he take it?

A. Back to Arlington.

Q. And when did you find out about that?

A. Well, I called, I called Dragger up down at Spotsylvania Camp and told him where I was and I would be late a couple of days so I would be back down there and I didn't see any excuse why, I couldn't come down there, and he told me, he said, he said you better get over to the barracks. I said why and he said I can't tell you over the phone. You better get over there. Something important has happened and so I went right over.

Q. When you got there, who was there?

A. Commander Rockwell was there and he told me what I had done, that I had deserted my post and all that.

Q. Did you tell him something about breaking into your room?

A. Yes. I told him I didn't think that was an
page 2454 } honorable thing to do. I said the least he could have done was wait until I got there and we could work it out and not do it behind my back.

Q. Did you get all your stuff back that he took out?

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A. No sir. I didn't get all my stuff out.

Q. As a matter of fact, you refused to sign a receipt for it?

A. Right. Everything, Koehl told me he would give me \$15.00 as Party expense if I would sign that paper saying they didn't have anything of mine and I wouldn't. I mean it was just a big pile of stuff in the room and all over the place plus I had about \$200 or \$300 worth of art materials and I had my dog, Zorba, who was up there, and I had an expensive drafting set that I couldn't find.

Q. Now, did you have a shotgun there?

A. Yes sir. I still have that shotgun.

Q. You still got it?

A. Yes sir.

Q. And did they want the shotgun back?

A. Yes. I called up and I told them return my stuff and I'll return your shotgun.

Q. Did they return your stuff?

A. No sir. I got the drafting set and my dog,
page 2455 } Zorba, back but not the art materials and
things.

Q. Did you return the shotgun?

A. No. Not yet.

Q. It's a cheap shotgun, isn't it? What kind of a shotgun is it?

A. It's just one you click open and insert—

Q. (Interposing) A single shot?

A. Yes.

Q. All right.

Now, do you have any other guns?

A. Yes sir.

Q. What kind?

A. A thirty-eight.

Q. And how long have you had that?

A. Rockwell gave it to me after Colonel Welch—and I would say—I have to remember what time Colonel Welch left and I would know. I'm not sure how long after he left—as a matter of fact, it's defective, the trigger mechanism is defective.

Q. Now, did there come a time when you did leave the Party up there?

A. Yes sir.

Q. And were you particularly bitter about
page 2456 } leaving?

John D. Patler

A. No sir. I was—well, my wife can testify to this—I wasn't angry. I mean I knew it was coming and I just let it happen. I was, relieved would be the word I would say, would use. I mean we was coming the point where we just had to have a parting of the ways. Me going my way and him his way and that's that.

Q. Now, did you go to work?

A. Yes sir.

Q. Did you ever work at Drug Fair?

A. Yes sir.

Q. When was that?

A. During the summer time and I worked there at night and I went to the Corcoran School of Art during the day time.

Q. Did you hear Rockwell had been shot at one other time, June 27, about 3:00 o'clock?

A. Yes sir.

Q. Where were you on June 27 at 3:00 o'clock?

A. I was in school.

Q. Where was that?

A. The Corcoran School of Art on New York Avenue.

Q. Would their records reflect that?

A. Yes sir.

Q. You're positive?

page 2457 } A. Yes sir.

Q. Now, after you got out and went to work at Drug Fair, how did you get from your house on Lee Highway to Drug Fair?

A. I walked.

Q. You walked?

A. Oh yes, I walked because a lot of times Mr. Ervin wasn't there and Alice had to stay with the kids so I had no way of getting there, you know, by vehicle and I just walked I walked most of the time.

Q. Where was that Drug Fair?

A. Well, from Lee Highway to Glebe Road and Berkley Drive, it's the all night Drug Fair in Buckingham.

Q. It's in Buckingham?

A. Yes sir.

Q. Now, do you walk a lot?

A. Yes sir.

Q. As a matter of fact, you told the police that?

A. Yes sir.

Q. (Continuing) Didn't you?

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A. Yes sir.

Q. Now, did you make any arrangements to further your education?

page 2458 } A. Yes sir.

(Whereupon, Defendant's Exhibit AA was marked for identification.)

By Mr. Harrigan:

Q. Now, there's been some testimony in this case that when you got out of Mr. Rockwell's organization that you formed some other group?

A. Yes sir.

Q. Now, would you tell the Jury the circumstances, what group you formed, if any, and how many members it had and what was the purpose of it?

A. Well, it wasn't really anything of a formal organization. It was really something that was more or less on paper. It was called White Power Committee. A friend of mine, Chris Bailey and I got together one night and we wanted to protest against Stokely Carmichael marches in front of the White House against the war in Viet Nam and we went on down there and as a result we put out a little leaflet and called it a White Power Committee. The entire so-called committee consisted of one member but it no longer exists. It's defunct. It didn't last more than a week or so. It was just an excuse for printing a paper in support of the boys in Viet Nam.

page 2459 } Q. And that is the sum total of the White Power?

A. That's it.

Q. And the protest at the White House that one time?

A. That's it.

Q. Did there come a time when you attempted to further your education?

A. Yes sir.

Q. What steps, if any, did you take?

A. Well, I—

Q. (Interposing and continuing) towards this goal?

A. I filled out an application—well, after I got in the Corcoran School of Art, I made an application to the University of Virginia Extension Center. I filled out an application, paid my \$10.00 fee and had an interview with the registrar.

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I told her I didn't have a high school diploma but I had an equivalency agreement which I received in the Marine Corp and I had taken an extension course in American History while in the Marine Corp and she told me that I would have to get a transcript from the East Carolina College and I would have to get a transcript of my high school record and the G.E.D. score and after I got those, I could take the course.

Q. Did you write to the Department of Defense to get the G.E.D.?
page 2460 { A. Yes sir.

Q. What is G.E.D.?

A. It's something they give you—if you pass the test, you receive what is the equivalent of a high school diploma.

Q. Now, I show you Defendant's AA which is dated 29th of August which is from the Department of Defense.

Do you recognize that?

A. Yes sir.

Q. What is it?

A. It's a letter from William H. Dix, who is registrar of the United States Armed Forces Institute and it shows a record of my scores that I received on the—well, here on general educational development, high school level test.

Q. Was that in response to your request for the scores?

A. Right. I had to write them to get the information for the registrar.

Q. Do you recall the day you wrote to get the information from them?

A. Yes. It was a week, I think, after I quit Drug Fair. It might have been the latter part of my last week before Drug Fair which would be a week or a week and a half before I was arrested.

page 2461 { Q. So that would make it around the middle of August?

A. Yes, maybe a little up further than that.

Q. That reply is dated when, 29 August 1967?

A. Yes.

Mr. Harrigan: I'd like to offer this in evidence.

The Court: Is there objection, Mr. Hassan?

Mr. Hassan: No objection.

The Court: Received as Defendant's AA.

Mr. Harrigan: Along with the envelope which wasn't marked.

John D. Patler

The Court: I'll mark that as part of the same exhibit.

(Whereupon, Defendant's Exhibit AA was entered into evidence.)

By Mr. Harrigan:

Q. Now, did you take any other steps?

A. Yes sir. I wrote to a high school, Christopher Columbus High School and they wrote me back a letter that I would have to send them a copy of the application so I did that and then they replied and said now I would have to pay \$7.50 for a book or two books which I had failed to return when I left the high school. So until I paid that they

page 2462 } wouldn't send my transcript.

Q. I show you Defendant's Exhibit Z.

Can you identify that?

A. Yes sir.

Q. What is it?

A. The top shows that it is a letter from Mrs. Ethel Haspel, and she tells me here there is a notation on your record indicating you owe \$7.25 in library books. Until this is cleared up we are unable to forward any records and included in the reply is a blank application partially filled out by myself.

Q. For admission to where?

A. To the Northern Virginia School of General Studies for the University of Virginia and attached to the back of that is a little mimeographed sheet giving the instructions on what you have to do to apply for admission and the tests. This is what she sent me.

Q. What's the date of that response?

A. August 23rd.

Q. 1967?

A. Yes sir.

Mr. Harrigan: I'd like to have this in evidence.

Mr. Hassan: No objection.

page 2463 } The Court: Defendant's Exhibit Z consists of three parts of a letter of application for admission and duplicate copy of instructions.

Mr. Harrigan: I'd like to show these to the Jury. We might as well do that now. It's the envelope it came in addressed to John Patler.

The Court: Go ahead, Mr. Harrigan.

John D. Patler

(Whereupon, Defendant's Exhibit Z was entered into evidence.)

By Mr. Harrigan:

Q. Now, just for a point of clarification, on this G.E.D. Development Test, Defendant's Exhibit, it has the name of John Patsalos. Tell the Jury what that is.

A. That's my name at birth and that was legally changed April 20, 1960 in the Prince William County Circuit Court.

Q. So it has been changed to John Patler?

A. Yes sir. And while I was in the Marine Corp, just before in the Marine Corp the records were changed and when I took the test, I had my name as it was then at that time, I had my birth name when I took this test and that's why the name appears here and the guy indicates on the letter, he said we would have to have a writ of the Notary page 2464 } statement certifying the change and issue it in the legal name.

Q. So the weeks prior to your arrest in August, you were concentrating on getting into the University of Virginia?

A. Yes sir.

Q. Now, you own a coat?

A. Yes sir.

Q. What color?

A. A black raincoat.

Q. You don't own any other coats?

A. Yes sir.

Q. What color are they?

A. I've got a white raincoat and I've got a brown rubberized raincoat. I've got a—

Q. (Interposing) Now, I show you Defendant's Exhibit BB.

Take a look at that. Do you recognize that?

A. Yes.

Q. How?

A. Because it's my coat. I know it by size and I know it by the inside.

Q. What size is that coat?

A. A thirty-eight short.

Q. Thirty-eight short?

page 2465 } A. (nodding affirmative)

Mr. Harrigan: I'd like to introduce that into evidence.

The Court: Is there objection, Mr. Hassan?

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Mr. Hassan: I'd like the record to show it has a marking and date and what that marking and date is on that coat, I don't know.

The Court: Well, it will be introduced and all that goes with it.

Mr. Hassan: I'd like an explanation before the introduction. I don't know what it means.

Mr. Harrigan: 8-26, Robert Hunt—and he'll testify that he picked it up at the Lee Highway address.

Mr. Hassan: I have no further objection to it.

The Court: All right.

(Whereupon, Defendant's Exhibit BB was entered into evidence.)

By Mr. Harrigan:

Q. Now, I show you Defendant's Exhibit CC.

Take a look at that.

A. It's my coat.

Q. How do you know that?

page 2466 } A. Because I've got my initials on it and also
by the buttons because they look a little like
swastikas.

Q. Let me show you this one that I showed you.

A. And this one was given to me by Frank Schmidt, I think.

Q. All right.

This one, BB, has an initial in it, too.

A. Yes sir.

Q. Is that an initial in it?

A. Yes sir.

Q. What is that initial?

A. "J"

Q. Did you put that there?

A. Yes.

Q. All right.

Now you say that coat has your initials in it also?

A. Yes sir.

Q. Where are they?

A. On the top here.

Q. On the top?

A. Yes.

Q. And this coat was given to you by whom?

A. I think Frank Schmidt.

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page 2467 } Mr. Hassan: Put in the record, the date.
Mr. Harrigan: This one has initials, 8-26, Bob
Hunt's initials.

The Court: Do you offer that?

Mr. Harrigan: I offer this also, Your Honor.

Mr. Hassan: No objection.

The Court: Defendant's CC.

(Whereupon, Defendant's Exhibit CC was entered into evidence.)

By Mr. Harrigan:

Q. Now, I show you one more coat, Defendant's DD, and it's a plastic brown coat. Look at that.

Whose coat is that?

A. I know this is my coat because it's a wreck. I know it.

Q. It's your coat because it's a wreck?

A. Yes. I know the holes in it.

Q. All right.

A. (Continuing) And there should be a hole in the arm, too. Yes, there it is. I don't wear this very often.

Mr. Harrigan: I'd like to offer this in evidence Your Honor.

page 2468 } Mr. Hassan: Give the initials and the date.

Mr. Harrigan: 11-14-67, Bob Hunt.

The Court: Received as Defendant's Exhibit DD.

(Whereupon, Defendant's Exhibit DD was entered into evidence.)

By Mr. Harrigan:

Q. You don't own any other coats other than these three, topcoats?

A. No, just jackets.

Q. Now, this black coat, how long have you owned that?

A. Maybe a year and a half, maybe two years.

Q. A year and a half or two years?

A. (Nodding affirmative)

Q. And this other one?

A. That one I owned longer.

Q. This one longer?

A. Yes.

Q. And this one being CC, the tan coat?

John D. Patler

A. Right.

Q. And this plastic coat, Exhibit DD?

A. I think just about the same time as the white one.

Q. All right.

page 2469 } The Court: The Court will take a ten minute
recess.

(Whereupon, a short recess was taken.)

Mr. Harrigan: What was the last question?

(Whereupon, the Reporter read back the last question.)

By Mr. Harrigan:

Q. Now, John, were you ever at North Randolph Street?

A. Yes sir.

Q. Were you ever at the barracks?

A. Yes sir.

Q. Now, how many guns to your knowledge did they have around those place from time to time.

A. Just a whole bunch of guns. I mean all kinds of guns coming and going. I mean there was always a great number of weapons available at the headquarters and the barracks.

Q. Now, I show you Commonwealth's Exhibit 44A.

Have you ever seen a gun like that?

A. Yes sir. Other than in the Court Room, I saw the gun in 1963 in the possession of Robert Lloyd. I saw it on one or two occasions on a desk in Koehl's room and I saw it on a odd table in the Order Room at 928 North Randolph Street and that was back in 1963.

Q. Did Lloyd ever loan you this gun?

page 2470 } A. No sir.

Q. Was there any reason for Lloyd to loan you a gun?

A. No sir.

Q. Now, there's been some talk about that you stole a cap and ball pistol?

A. Yes, I heard that.

Q. And that was attributed to Mr. Lloyd also?

A. And Koehl.

Q. And Koehl?

A. Yes sir.

Q. Let me ask you this.

John D. Patler

Did you have a cap and ball pistol?

A. Do I have one now?

Q. Yes.

A. No, I don't own it now.

Q. Who owns it?

A. Mr. Ervin owns it now.

Q. Whose cap and ball pistol was that?

A. That cap and ball pistol belonged to David Hughes and he gave it to me when he left the party.

Q. Do you have a letter to prove that?

A. Yes sir.

Q. Now, this cap and ball pistol, what type
page 2471 } of gun is that?

A. Well, it's a replica, like Mr. Ervin was saying before, it resembles an old confederate side arm. It's a replica of the ones used during the Civil War. You have to load it yourself and pour in the powder and put the ball in and shove the ball in the chamber and put a little crystal or something on there and place a percussion cap on the back. The reason you put the crystal on is so it won't ignite the powder and blow up your hand. It's just a replica. It gives off a tremendous amount of smoke when you fire it.

Q. Have you ever fired that gun?

A. Yes sir.

Q. Has Mr. Ervin ever fired it that you know of?

A. Yes sir, I think he has. In fact, I think he put a little too much powder in one time and it gave off quite a smoke.

Q. Now, do you wear a hat as a rule, John?

A. No sir.

Q. Did you ever wear a hat?

A. No sir. I'm sort of for not wearing a hat. I remember wearing a hat one time but it was during a demonstration. It's kind of a fatigue cap, the same kind you see Castro on with all the time and we just stick it in the
page 2472 } bleach and it turned tan and we had another strap on the cap and band around with signs.

That's the only time I ever wore a hat.

Q. Now, do you know Mat Koehl or Commander Koehl or whatever he's called?

A. I know him.

Q. How did you and Mr. Koehl get along?

A. Not to well. We had disagreements with him, too.

Q. Tell the Jury basically what was the disagreement with Mr. Koehl.

John D. Patler

A. Well, you see, within the radical right wing, you have, within organizations, there are people who differ on ideological ground and Koehl and I differed on ground. I mean he looked down upon the Southern European people with disdain and adulated Northern European people and I felt this was an improper thing to believe in because I feel that white people all over the world and in America should unite whether you come from a Scandinavian, Italian or Scotch and Koehl and I disagreed on those grounds. That was about it.

He was playing a little too fanatical. I believed in white unity completely and I figured if two white men were confronted by a mob of five hundred Negroes and one white man happened to be the blondest white man from the page 2473 } northern most part and the darkest white man in the southern part of Europe, the Negroes wouldn't look on these people as having differences. They look on them as two white men. That was our disagreement.

Q. Did you have a disagreement about insignia and Seig Heil and swastikas?

A. Yes we did. Mat Koehl was, his father was a German American Bund.

Q. What was that?

A. An organization formed by Hitler in America for German American citizens and it was pro-Nazi. It was a lot of difficulty in part of World War II and just the beginning.

Q. All right.

A. (Continuing) And Mat Koehl, he wanted to *emphasize* Hitlerism and German Nazi Socialist as a swastiker and all the foreign aspects. Whereas, I—

Q. (Interposing) What form of aspect are you talking about?

Mr. Hassan: I'm going to ask if he's going to ask these questions inquiring answers to let him finish the answer.

The Court: The objection is sustained.

Mr. Harrigan: All right.

The Witness: Well, for instance, I didn't think page 2474 } it was a good idea. I didn't think it was a good idea in America to run around in America shouting Seig Heil and I didn't believe that was a good idea to run around America shouting Heil Hitler and I didn't think it was a—I tried to modify the foreign aspects con-

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nected with the Party and I ran into quite a bit of trouble with Koehl in that respect. Some animosity rose between us as a result.

Q. Now, were these basically political?

A. Yes.

Q. (Continuing) Beliefs?

A. I had disagreements with Rockwell. There was no hate. It was just disagreements. I mean on ideological ground, administrative ground. I mean my marriage. You see, it just wasn't anything where you got to the point you wanted to hit something or hurt somebody or hate somebody because I—

Q. (Interposing) Now, prior to August 25, 1967 when was—

A. (Interposing). Oh, one thing I wanted to point out.

Q. Excuse me.

A. Excuse me.

I think Mr. Hassan pointed out at the time—this reminded me of it—I wanted to have the name of the Party changed to White Peoples Party and Koehl and the others
page 2475 } wanted to still include the word Nazi and we
compromised and based it on Nazi Socialist
White Peoples Party.

Now, Mr. Hassan said I was the one that changed the whole frame but I didn't. I just—I pushed for the White Peoples Party and the opposite faction pulled for the Nazi but I wanted to omit the Nazi because that wouldn't create a fashionable impression upon the public.

Q. Now, when were you down or around that shopping center prior to August 25, 1967 and under what circumstances were you there?

A. Oh gee, I was at the shopping center sometime at the beginning of the week before Rockwell was shot.

Q. All right.

Now, how many times prior to his being shot?

A. Gee, I don't know. I can't remember but you want to go on—

Q. But you were down there, you admit that?

A. Oh yes.

Q. What were you doing down there?

A. Going to the Goodwill store to try and buy a crib for Nick. We wanted to get an extra crib and I left a little note there. The woman said she didn't have any cribs so I left a little note and she asked me to put down what I

John D. Patler

page 2476 } wanted, my name and telephone number and if
the crib came in, she would call me up and let me
know about it.

Q. Why did you go there?

A. It's the only Goodwill store I know of in the area.

Q. You say you went down there a few days before August 25?

A. I can't say—it must have been a week or so but sometime before he was shot I was at that shopping center.

Q. I see.

While you were there did you see anybody there that you knew or that knew you?

A. Yes.

Q. Who.

A. Mrs. Forsythe.

Q. Who's Mrs. Forsythe?

A. Well, I don't know her like a friend. I know her more like, you know, just a face I know. I ran into her about maybe two, three years ago. We meet—it was a very rainy day and I was out walking and I ran into this store to get out of the rain, the store front, and she came along behind me there and we started a conversation and she said she had been walking to help her reduce and her husband was picking her up and she asked me if I wanted a ride and I

page 2477 } said no because that would mean a ride to the
Nazi Headquarters and I didn't want her to
know I was a Nazi and that was—she lived two or three
blocks away from it.

Q. She's not connected at all with the Nazi?

A. No, she didn't even know I was a Nazi but later on she figured it out when she saw me going up and down the hill. I once met her in a laundromat and she tried to talk me out of it.

Q. Did you ever help push the car for her?

A. Yes, I helped her push the car in that it was that guy, Bob Pace and I who helped push the car and she promised to make me a blueberry pie for helping her push that car but she never did.

Q. And that's the woman?

A. And she—her little boy was the one who was supposed to have found the shell.

Q. And that's the one you saw when you were up there previously, is that right?

A. Um hmm.

John D. Patler

Mr. Harrigan: Your witness.

CROSS EXAMINATION

By Mr. Hassan:

Q. Was it the 24th of August when you saw page 2478 } her, Nadine Forsythe?

A. I beg your pardon?

Q. Was it the 24th of August when you saw her, Nadine Forsythe?

A. No sir.

Q. You're positive?

A. Positive.

Q. It wasn't noon time on the 24th, the day before the shooting?

A. Yes sir.

Q. You're absolutely positive?

A. I'm positive.

Q. When you were there and saw her was anyone on the roof?

A. The roof? You mean the roof of the shopping center?

Q. Yes.

A. I didn't pay any attention to the roof.

Q. You didn't pay any attention to the roof?

A. No sir.

Q. You didn't see anybody up there?

A. No sir.

Q. Now, would you think that Mrs. Forsythe might be more right about the day than you are, that she page 2479 } saw you there close to the 25th of August?

A. Well, you mean if she's going to say she saw me the day before? She would be wrong. It was a week before that.

Q. It was a week before?

A. It was the beginning of the week.

Q. Was it Thursday?

A. No.

Q. Not Thursday?

A. No sir.

Q. When did you first join the Nazi Party?

A. I was stationed in Portsmouth, New Hampshire in the United States Marine Corp. I was a prison guard up there. I received a membership card from Commander Rockwell. I didn't ask for it. I just received it. I had known him some

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years prior to enlisting in the Marine Corp and there began my official connection with the Party.

Q. And did there come a time when you became active in the Nazi Party here in Arlington County?

A. Yes sir.

Q. When was that?

A. That was when I got out of the Marine Corp in 1960.

Q. Did there come a time then when you left?

page 2480 } A. Yes sir.

Q. When was that?

A. 1961.

Q. And what was the reason for your leaving in 1961?

A. I left with a fellow named Dan Burrows and another fellow named Ralph Franetti and my first wife.

Q. And did you have some disagreement at that time with Commander Rockwell?

A. No real disagreement. We just felt we thought we would go off on an adventure of our own. That's all.

Q. And there was no disagreement?

A. No sir.

Q. What was this adventure of your own?

A. We formed a little group called the American National Party in New York.

Q. Do you know the name of a publication?

A. Yes sir.

Q. What was the name of the publication?

A. Kill Magazine.

Q. Were you the editor of that?

A. Dan Burrows was the writer.

Q. Did you do some of the writing?

A. No sir.

page 2481 } Q. I would like to show you this magazine
and ask you if you had anything to do with the
writing or the publication of it?

A. Yes sir. This is the second issue and this is when Dan Burrows was the editor. You're showing me the second issue. Dan Burrows was originally the editor. Now, he's showing the picture where I became the editor.

Q. That's what I thought.

A. No, but you asked me—

Q. (Interposing) You were the editor of that particular issue?

A. Yes.

Q. That's what I thought.

John D. Patler

Mr. Harrigan: I think Mr. Hassan should extend to us the same courtesy that we've been extending to him to show us the exhibit.

Mr. Hassan: I just wanted to identify it. I haven't offered it yet. I wanted it to be identified. He said he wasn't the editor and that says he was.

The Witness: It says Volume 1, No. 2.

Mr. Hassan: Please don't discuss it until I ask you a question.

You can volunteer for Mr. Harrigan but I
page 2482 } wish you would just answer my questions.

The Witness: Yes sir. I recognize this.

Mr. Hassan: I'd like to have this marked Commonwealth's Exhibit No. 69.

I offer this in evidence, Your Honor.

The Court: Is there objection?

Mr. Harrigan: Yes, Your Honor. For several reasons.

The Court: Let the Jury retire.

Mr. Hassan, before the objection is stated, would you state the purpose for which it's offered.

Mr. Hassan: Editorial comments, policy and activities of this gentleman while he was out of the Party the previous time.

The Court: And what is the basis of your objection?

Mr. Harrigan: It's offered for the purpose of editorial comments, policies. The basis for my objection is two-fold. One is, it has absolutely no relevance to any matter at issue in this trial and that is the sole purpose of the production or of introducing it so to prejudice the defendant. It's a magazine that was published by a Mr. Burrows, then Mr. Patler did do some publication as editor of it. It doesn't even purport to be his work at all. There is a mention in there where

Patler was arrested during a demonstration
page 2483 } which is never admissible. It's a basic misdemeanor and then it goes on to give the article about his jail sentence.

Our position is that the Court should sustain the objection on the magazine and instruct the Jury and we would move that the Court instruct the Jury that all comments of the prosecutor regarding Kill magazine be thrown out and that they should disregard all such testimony concerning it.

I fail to see any relevance at all even the slightest continuous connection to this particular case and the facts in this case.

John D. Patler

The Court: Well, the objection is sustained. I think—

Mr. Hassan: (Interposing) I would like to have an opportunity to argue, Your Honor.

The Court: That's what you had.

Mr. Hassan: You asked why I offered it. I think I should have a right to offer argument. It's his Motion.

The Court: Well, I'll hear it. Go ahead.

Mr. Hassan: If Your Honor please, this publication which he put out shows his attitude towards violence as a reaction to having become associated with Burrows after an argument with Commander Rockwell and in this particular issue on page 6, there is two interesting comments on assassinations which is the editor's thinking on assassinations page 2484 } in which he says:

"Two interesting events occurred last month. Kwame Khrumah, communist boss of Ghana, was nearly killed by a bomb thrown at his car while he was visiting a northern village. Unfortunately the bomb didn't kill the black pig. If it had, the world would have been rid of one of the worst black swine's alive. We hope the assassins keep trying . . ."

"In France, Charles DeGaulle due to some misdirected luck escaped another attempt on his miserable life. A dozen members of the Secret Army organization which is still very much alive and going full steam ahead delivered a machine gun attack on DeGaulle's car. They attacked from both sides, machine guns blazing, but were driven off by strongly armed guards. News of Secret Army activities has been highly censored to keep the public from knowing that DeGaulle is being opposed for selling out the French people. Each attempt on dictator DeGaulle's life seems to come a little page 2485 } closer to success. We hope they don't miss the next time around. Long live the OAS!"

Then we have an article in here that gives his attitude towards Lincoln Rockwell at that time. In an article, that liberal Rockwell, with a cartoon which I think is *indictative* still of this defendant and that is a published story by Ralph A Grandinetti which sets forth the seven evils of the world which must be the opinion of the editor. Nothing in here by the editor says it's not his opinion and it goes to the feelings of the defendant and his philosophy of thinking and it would be tied in to the present time in due course.

John D. Patler

The Court: The defendant is not being tried for his opinion he held in 1962, but for the charge that he committed murder in 1967, and the objection is sustained.

Now there is in this magazine, as I read it, some evidence that he had a disagreement with Rockwell. That is something you may cross examine him on because he testified in his cross examination in response to one of your questions that he had no disagreement with Rockwell; he just went off on a frolic of his own, I think is the way he put it.

To the effect that statements in the magazine would impeach that statement, you may cross examine page 2486 } him from its contents on that point but it will not be admitted into evidence.

Now, the defendant has moved that any comments made by Mr. Hassan and concerning this magazine be stricken, and that Motion is denied.

I don't think any proper or prejudicial use has been made of it up to this point.

Mr. Harrigan: Exception.

I think Mr. Hassan is trying to show a propensity for violence by showing the article which has no foundation that this man even wrote it. The remoteness of it and what he's trying to do is put character evidence or bad character evidence of some sort into the record when the issue of character has not been raised by anybody.

The Court: Mr. Hassan, scrupulously stayed away from the contents of this magazine so I don't think any harm has been done at all.

We will recess for fifteen minutes.

(Whereupon a short recess was taken.)

The Court: All right. Call the Jury.

Mr. Hassan?

Mr. Hassan: Well, if Your Honor please, I would like to offer in evidence Commonwealth's 8A which has page 2487 } been marked for identification and which has been identified in the direct examination by this defendant.

The Court: Is there objection?

Mr. Harrigan: No.

The Court: Received as Commonwealth's 8A.

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(Whereupon, Commonwealth's 8A was entered into evidence.)

By Mr. Hassan:

Q. I'd like to show you this, sir, and ask you whether or not that was ever delivered to you?

A. Yes sir.

Q. I didn't hear you.

A. Yes sir.

Q. And is that letter referred to in Commonwealth's Exhibit 58B as being on March 30, 1967?

A. Yes sir.

Mr. Hassan: If Your Honor please, I offer this in evidence.

The objection to the admission was a failure to show delivery to the defendant.

I'd like to offer that at this time.

The Court: Is there further objection?

Mr. Harrigan: Let me take a look at that.

page 2488 } The Witness: Your Honor, that particular copy wasn't given to me.

Mr. Hassan: I thought you meant that it was a copy which was given to you.

The Witness: It appears to be, yes sir.

Mr. Hassan: It's your modification of duties?

The Witness: Yes sir.

Mr. Harrigan: I would still object to it, Your Honor.

It's a modification of duties apparently from Commander Rockwell, which at best he put in his point of view as to why these duties have been modified and alleges certain things and obviously Commander Rockwell is not here for cross examination.

He's trying to apparently introduce it for the truth of the matters contained therein and we have no opportunity to rebut it with any witness or opportunity to cross examine any witness as to the validity of a single thing there. It doesn't allege any threats against the Commander that Mr. Patler made at all. It's just administrative change in his duties because of certain reasons which Rockwell felt were important.

If it were coming from the defendant to Rockwell, I could see where it would have some connection but it's

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page 2489 } the other way and I fail to see it and we would object to it.

Mr. Hassan: If Your Honor please, in direct examination he was questioned by Mr. Harrigan as to Commander Rockwell's breaking into his room and removing his things and bringing them to Arlington and this is directly associated with that episode which has been testified to in direct examination.

In addition, it does show animosity and it relates to dismissal which is already in evidence.

The Court: It seems to me that this in the category of several other exhibits which the Court did not receive because it did not put anything new in which was not put in by the oral testimony of Koehl and perhaps some of the other witnesses but it tends to be merely a document of some details of disagreement between the two parties and there's been no dispute that there was such a disagreement. The defendant has testified to most of the things in this. I think it adds nothing to the case and it may possibly inject error in that it's a hearsay declaration by Rockwell which does not show any animosity from the defendant toward Rockwell but rather the reverse and really is merely a detail of what is spelled out much more clearly and finally in the dismissal that followed this very closely.

page 2490 } The objection is sustained.

Mr. Hassan: What was the number of that, if Your Honor please?

The Court: 57B.

Mr. Hassan: Exception, please.

By Mr. Hassan:

Q. Now, I would like to show you Commonwealth's Exhibit 59 for identification and ask you whether or not this is your handwriting and did you request copies of Commonwealth's Exhibit No. 57 which was refused?

A. It's my handwriting.

Q. And did you write that?

A. Yes sir.

Q. And was it for the purpose of requesting mimeographed copies of Commonwealth's Exhibit 57?

A. Yes sir.

Mr. Hassan: I offer that in evidence.

Mr. Harrigan: Same objection. He already testified that

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he received a copy of the other so what does that add that he asked for it also, if he asked for it. If he received it, he obviously asked for it.

The Court: Well, there does appear to be no doubt that he received it, therefore, this doesn't add anything
page 2491 } that he hasn't covered in oral testimony.
The objection is sustained.

By Mr. Hassan:

Q. Now, I show you Commonwealth's Exhibit No. 60 for identification, and ask you, sir, whether or not you wrote that and whether or not that is still your opinion?

Mr. Harrigan: Before he answers the question, I don't know what that (indicating) is. I've probably read it but I'd like to read it first.

The Witness: This is a letter in my handwriting.

Mr. Hassan: I beg your pardon?

The Court: He says it's a letter in his handwriting.

Now do you wish to examine it?

Mr. Harrigan: (nodding affirmative) I would like to ask him one question first.

The Court: Pardon me?

Mr. Harrigan: I would like to ask him one question first.

The Court: All right.

Mr. Harrigan: Is this a letter in your handwriting or is this a photostat of a letter?

The Witness: Yes. That's a photostat of a letter in my handwriting.

page 2492 } Mr. Harrigan: I would object to that as being not more than a letter from Mr. Patler criticizing himself. It has absolutely no threats at all. As a matter of fact, it's more than friendly. It's almost a letter asking the Commander to understand his beliefs and it discusses that they're almost like a father and son and if anything it's merely a self-criticism.

Mr. Hassan: I feel, Your Honor, it contradicts the testimony that he gave concerning the northern and the south Mediterraneans and his attitude of it.

Mr. Harrigan: I don't think it contradicts it at all. It says what his attitude is at the end. It's entirely consistent with what he said.

The Court: I think it opens up some collateral issues of that kind but it has no probative value in this case.

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The objection is sustained.

By Mr. Hassan:

Q. Now, sir, I show you Commonwealth's Exhibit No. 61 which is a letter purportedly directed to you about which there appears to be your handwriting which is both sides of a controversy and ask you sir whether or not you received that letter and whether you wrote those or printed on that letter those remarks and then did you communicate that back to Commander Rockwell?
page 2493 }

A. The answer to all your questions is yes.

Mr. Harrigan: I think I've read this one, too.

Did you look at the back of it?

The Witness: Yes. I read that before.

Mr. Harrigan: Your Honor, ordinarily I'd have the same objection to that, too, but we won't object on that letter going in because it's what Rockwell said to him and he wrote on the same letter what he said back to him and I think the Jury ought to know just what we're talking about here and I'd like to have them look at it.

The Court: All right.

It will be received in evidence as Commonwealth's 61.

(Whereupon, Commonwealth's Exhibit No. 61 was entered into evidence.)

By Mr. Hassan:

Q. Now, sir, I show you Commonwealth's Exhibit 62 for identification and ask you sir whether or not that is a letter that you wrote to Commander Rockwell, a photostatic copy of a letter which you wrote to Commander Rockwell?

A. Yes sir.

Mr. Hassan: I offer that in evidence, Your
page 2494 } Honor.

The Witness: This is a photostat of a letter that I wrote.

Mr. Hassan: Beg your pardon?

The Witness: This is a photostat of a letter that I wrote.

The Court: Is there objection to 62?

Mr. Harrigan: Yes Your Honor there is. That letter is the same as most of the others. It contains absolutely no threats at all and there's been all kinds of testimony regard-

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ing the same type of animosity, quarreling back and forth, and we would object to it on that ground. I don't think it's dated either, is it?

The Court: I don't see a date on it.

Mr. Hassan: That can be remedied.

By Mr. Hassan:

Q. When did you write it?

A. May I look at it again?

I would have to say sometime in 1966. I couldn't pinpoint the month but I would say in that year sometime. I referred here to Dr. Pierce and that's when he began publishing a magazine.

If I could find out the date of the first magazine, I could answer that question.

page 2495 } The Court: Mr. Hassan, what is your purpose?

Mr. Hassan: I say that that shows the same continuing simmering animosity that is described in the letter which was just admitted, Commonwealth's 61, which showed the same animosity in '66 and existed in the first break from the Party and as existed at the time of his discharge. It's a continuing of the conditions before and after Commonwealth's Exhibit 5 and 61 and refers even further and that makes a charge of dishonesty which has been referred to in the testimony.

Mr. Harrigan: I think the fact is that it mentions a letter of disagreement which has been proven by all other witnesses. They have testified about it. As a matter of fact, he testified about it himself, Mr. Patler.

The Court: I'm of the opinion that I have been right along with these things that under the O'Boyle case, the Court has a right or the duty, I think, to admit evidence tending to show the fact of a disagreement but that's all, apparently not the particulars of the disagreement and this does seem to me not to add anything to what's already in evidence but simply does set forth those particulars.

So the objection is sustained.

Mr. Hassan: Your Honor, I will not offer 64 since it appears to be a reply to that letter.

page 2496 } By Mr. Hassan:

Q. Now I show you Commonwealth's Exhibit

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No. 65 and ask you sir if that is your communication to Commander Rockwell?

A. The answer is yes.

Q. And that is your signature on the back, do you agree?

A. Yes, that's my signature.

Mr. Hassan: I'm going to offer this, Your Honor.

Mr. Harrigan: I would object to that too, Your Honor. I think that's the ten copies that are all identical and it's a request to Rockwell which he refused to sign.

Mr. Hassan: It's directed to several individuals who were witnesses in this case and have testified and is an ultimatum immediately preceding Commonwealth's 58A, which is his discharge, dismissal.

The Court: Was this referred to in 61, the one that was admitted by agreement?

Mr. Hassan: No. '61 is a 1966 matter. This is a '67 matter immediately preceding his dismissal.

The Court: What's the basis of your objection. You've already stated it.

Would you give it to me again?

Mr. Harrigan: The basis for the objection, Your Honor, is all it cites is a request by Patler to Rockwell to sign a number of copies that he lied about it.

There isn't a threat at all. There isn't even an unkind word at all in the memo. The request was to ask Rockwell to acknowledge that he had lied in some prior correspondence, with a number of copies so everybody in the organization would know about it. So Rockwell refused to sign.

The Court: I'll sustain the objection on the same basis.

Mr. Hassan: If Your Honor please, in view of the magnitude of the testimony and the scope, in order to save time in cross examination, I'm going to ask for a recess in order to be able to draw together this. I have no way of knowing what the scope would be to be prepared for this and I don't like to—I would like to be prepared for my cross examination of this witness as I have with other witnesses.

The Court: Is it your thought that you cannot conclude your cross examination this evening?

Mr. Hassan: It is, Your Honor, because of the numerous testimony, Your Honor. I would expect it would be close to 9:00 o'clock if I were to go and do nothing else right now.

Mr. Morris: We have no objection, Your Honor, to staying.

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Mr. Harrigan: We didn't take time out after
page 2498 { everyone of his witnesses to cross examine them.
I think we concluded and he's right in the middle
of his examination.

Mr. Hassan: I haven't begun yet.

Mr. Harrigan: Well, begin.

The Court: Is the last of defense's witnesses?

Mr. Harrigan: We have one more, Your Honor, and he
won't be a very long witness, I don't imagine. That's our own
investigator.

The Court: Mr. Hassan, I'll not require you to finish your
cross examination tonight. Some of the rules that the Court
has made may have changed your course and I'll give you
time to collect yourself before you conclude it. But I don't
want to spend now on those matters which you're unprepared
to proceed with for awhile.

Mr. Hassan: Give me a recess to look over my notes, Your
Honor.

(Whereupon, a short recess was taken.)

The Court: Are you ready to proceed with cross examina-
tion.

Mr. Hassan: I am not, Your Honor. To proceed at this
time, I believe, would occupy four hours of the Court's time,
less than that four hours to reduce that cross
page 2499 { examination to less than forty-five minutes. One
document which I need has been misplaced. It's
in among the handwriting examples and I've got to locate that
before I can proceed. Everything that I could possibly
cross examine on will tie into something that I can eliminate
a great deal of the Court's and Jury's time on if I can locate
the document.

I did not anticipate this propaganda.

Mr. Morris: If it's that confidential letter, we'll give him
ours—

The Court: Well, the authority of shortening the thing of
course is music to my ears. I'm of two minds about it but
giving the Commonwealth attorney the time he wants proba-
bly cuts both ways. It will enable him to prepare his cross
examination, it's true. It will also give the defendant rest
and a chance to confer with his counsels. At this hour of the
night, I think it's probably unwise to get into cross examina-
tion that's going for a long period of time.

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If I'm going to break it anywhere, I might as well break it now where it's already broken. So I will recess until 10:00 o'clock.

I would like you gentlemen to be ready to go through tomorrow morning.

Mr. Morris: Do we understand that Mr. Haspage 2500 } san will probably limit his cross examination then tomorrow to about forty-five minutes so we can prepare our witnesses for what time we'll be here to get—

The Court: (Interposing) That's what I understand.

Mr. Hassan: It depends on the answers I get. I don't anticipate—

The Court: (Interposing) I won't hold you to forty-five minutes limit but I hope that you will stick as close to that as you can. Of course, you all may have redirect but I would like to get right through to this and let this case go to the Jury as soon as we can.

Mr. Morris: Notwithstanding the Motion to strike.

The Court: Yes. There's also that, isn't there.

Would you call the Jury?

(Whereupon, the hearing was recessed, to reconvene at 10:00 a. m., Thursday, December 14, 1967.)

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The Court: Are you ready for the jury, gentlemen?

Mr. Harrigan: Yes, Your Honor.

Mr. Hassan: Yes, Your Honor.

(The jury was polled.)

The Court: Let the defendant resume the stand.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Mr. Patler, when you stated you were out on the morn-

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ing of August 25, 1967, you said you went to the post office in Falls Church?

A. Yes, sir.

Q. How long had you had that box?

A. I think January of that year.

Q. When you obtained that box, how many other boxes did you have in the United States Post Office?

A. I had no other post office box, but when I was living in Spotsylvania, the rural route mail box was referred to as the box.

Q. Were you receiving mail at someone else's box?

A. To the best of my recollection, no.

Q. Do you have a box in Washington, D. C.?

A. Yes, sir.

page 2504 } Q. Did you have it at the time?

A. No, sir.

Q. When did you get the box in Washington, D. C.?

A. The box in Washington, D. C., was, I would say, I'm not positive, but I would say somewhere around late May or even June.

Q. And how long did you have that box?

A. I believe I rented it just once or twice and I just neglected it.

Q. Now, do you receive mail in a box in Washington, D. C., that someone else had obtained?

A. Sir?

Q. Do you receive mail in a box in Washington, D. C., that someone else had obtained?

A. No, sir.

Q. Now, did there come a time when you got another box in Arlington?

A. In Arlington?

Q. Yes.

A. No, sir.

Q. What is post office box 108?

A. Post office box 108 is a post office box rented by the American Nazi Party, through which they receive just mail.

Q. Did you receive mail in that box?

page 2505 } A. When I was in the party, yes, sir.

Q. Did you receive any mail at that box after you were out of the party?

A. No, sir, because there is a key to the box and whoever was in charge of picking up the mail was the only one that had the key.

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Q. Did I understand you to say that you obtained the box in Falls Church for mail-order business?

A. Yes, sir.

Q. What is the nature of that mail-order business?

A. It is actually my wife and father-in-law, sort of partners.

Q. I can't quite hear you.

A. My father-in-law and my wife are sort of partners and they sell towels and other mail-order items and the purpose was, I was trying to help to raise a little money to help the family and so forth.

Q. That was for a business that your wife runs?

A. Yes, sir.

Q. Did you receive any mail other than your business mail at that box?

A. Yes, sir.

page 2506 } Q. Was that political mail?

A. I received a notice occasionally from Carl Allen informing me of meetings at the headquarters in Alexandria and I received correspondence from a friend of mine in Chicago and that is all.

Q. Who is that friend?

A. Herbert Booker, sir.

Q. Did you ask him to write you at that box?

A. Yes, sir.

Q. Did he write to you at any other address?

A. Yes, sir, he wrote to me, I think, at the box in Washington, D. C.

Q. If this was your wife's business address on Commonwealth's Exhibit 69, why was not the address on Lee Highway used instead of Spotsylvania, do you know the number of that offhand? Why didn't you use the Lee Highway address instead of Spotsylvania?

A. Well, sir, as you can see right here (indicating) names of persons entitled to receive mail at the box, it says John Patler, if someone wants to write to me, they can reach me at that box.

Q. That was not my question.

A. I know what your question was.

page 2507 } Q. Why don't you answer that, please?

A. There was no reason, I just mentioned if you want to write to me, you can use box 565, I could have easily said 2522, I just didn't.

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Q. It was your wife's business, but you gave the Spotsylvania address instead of your home address on Lee Highway.

A. The reason why was because at the time, I was in Spotsylvania, that was my address when I took out the box.

Q. But the box was for your wife's business?

A. Yes, sir.

Q. Now, on that morning, you went to a Safeway?

A. Yes, sir.

Q. I believe it was a Clarendon Safeway?

A. Yes, sir.

Q. How far is that from your address on Lee Highway?

A. Maybe four blocks, five blocks.

Q. Four or five blocks, what street is that on?

A. Well, I don't know the street, but I know it is right across the street from Perny's Department Store.

Q. Is there a bus stop there on Wilson Boulevard?

A. I guess so, I guess there's a whole lot of bus stops there.

Q. In the vicinity of the Safeway?

page 2508 } A. I don't know, sir.

Q. Now, you told how you walked up Fairfax Drive to the bridge, but you didn't tell us too much else.

Would you come down to this map and show us on this map the route you walked from the bowling alley to where you were waiting for the bus?

The Court: Mr. Patler, if you have trouble getting oriented, you can ask them where you are located on that map.

By Mr. Hassan:

Q. Now, you will want to speak up so the jury can hear you.

A. I will just need one moment to orient myself, you say this is the bowling alley here (indicating)?

Q. You tell us, I believe it is.

A. Well I know Fairfax Drive comes to a dead end.

Mr. Morris: The Court told him he could orient himself.

By Mr. Hassan:

Q. I am trying to help him, I believe it is.

A. What I am looking for now is the dead end.

Q. Isn't that it right there?

A. Well, this is a big Government building.

page 2509 } Q. That is called the Blue Goose.

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A. This is Glebe Road right here (indicating), now that is a Government building, I am familiar with this whole area, there is the Golden Point Restaurant here, this is Fairfax Drive, this is another Government building here, a new building on Glebe Road leading up to Buckingham, this is the bowling alley, Fairfax Drive comes to a dead end right around here somewhere and just a left angle curve leads back toward the boulevard, a lot of people take that there (indicating).

Okay, now somewhere in here (indicating), crossed over a little bridge, I am pretty sure, then there is a path with a little wooded area, I think, that surrounds that path and then another street and I forget if this is a street (indicating), I think it is a street, I think it is 9th Street, I am not sure, well, I am pretty sure it is a street. No, wait, I think this is George Mason Drive here (indicating), and then there is a path that goes right between this little area here, I walked through (indicating), and then there is a street here (indicating) which is George Mason Drive and lots of people use that to learn how to drive, George Mason Drive sort of ends and I think there is a path that once again connects George Mason Drive, this little wooded area intersects George Mason Drive (indicating) and is
page 2510 } once again connected by a path and I walked
along here and went along Washington Boulevard, well anyhow, I just walked down Washington Boulevard on the right-hand side, this side here (indicating).

Q. Here is George Washington Boulevard (indicating).

A. There's a path over there (indicating), okay, I just walked down here (indicating), I walked along here (indicating).

Q. How far did you walk?

A. I don't think I walked then, I can't come to where exactly, I decided to head back to Lee Highway and call my wife, as I mentioned before and then finally, I decided to take a bus somewhere around here (indicating). Somewhere around here (indicating), I crossed a street back.

Q. While you are still at the map, Detective Davis said that you told him for sentimental reasons, you were going to walk by an apartment, that you and your wife had lived in, will you show us where that is?

A. I can explain where that is.

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Mr. Harrigan: Be responsive, show him where the apartment is.

The Witness: The number on the apartment is 1171.

By Mr. Hassan:

page 2511 } Q. What street?

A. The street, I don't remember, but I know the number, can my wife come on over here?

Q. No, you are testifying.

A. That is it right here (indicating), that building right there (indicating), I am not sure now, I remember we had to take a street that went like this and that way (indicating), and it would have to be somewhere along here (indicating).

Q. Did you get up that far?

A. No, sir.

Mr. Harrigan: What street is he pointing to?

Mr. Hassan: I don't know the name of the street.

Mr. Harrigan: Kensington.

Mr. Hassan: I don't think it is Kensington.

By Mr. Hassan:

Q. Now, you said that when you were with Detective Davis, you stopped momentarily at the shopping center, and you saw a man lying on the ground, will you tell us what you saw?

A. All right, we stopped directly across from where a man was lying on the ground, his head was facing our car, I remember seeing a policeman on a roof, I remember seeing someone taking a picture of the man laying down, I think it was a policeman who was taking the picture, I am not sure and I remember a crowd of people, I remember we stood there for a little while. There was some kind of communication going on between Detective Davis and a policeman, he was running back and forth and then he said, "Get him out of here, get him out of here," and Detective Faulkner was sitting on my left side, I was sitting on the right side, the man laying on the ground was immediately to my right.

Q. detective Davis, I believe, said that you said he was laying on the side.

A. Well, when they had me in the police station, they asked me how he was laying.

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Mr. Harrigan: I object to that, Detective Davis said he didn't pay any attention at all, he didn't even know where he stopped.

The Court: Detective Davis, as I recall, said he didn't personally see the scene.

Mr. Hassan: He didn't say he saw it, but he said when he talked with Sergeant Pever and the defendant, he said the defendant said he was laying on his side with his arms folded across the chest, both Pever and Davis.

page 2513 } The Court: I frankly don't remember that detail of Davis' testimony, are you interested in what the defendant says?

Mr. Hassan: I want to know if that is what the defendant saw, I want to know what he saw, I am telling him what they said he said, I want to know what he said.

The Court: All right, the objection is overruled, let him answer.

The Witness: Could you repeat that question, could you ask that question again, sir?

By Mr. Hassan:

Q. Did you tell Davis and Pever that the man was laying on his side?

A. I said I thought he looked like he was laying on his back or side, but I thought he looked more like he was lying on his side, and I thought he had his hands laying on his chest like this (indicating), and then he asked me if I saw any blood and I said no.

Q. He was not covered with a sheet?

A. No, sir.

Q. Did you see an ambulance?

A. No, sir.

Q. Did you see an ID truck, police department page 2514 } identification bureau truck?

A. I tell you I don't remember whether or not, I could not positively say I saw a truck, but I know I saw somebody taking a picture.

Q. Were there many people there?

A. I'd say there were many people there, yeah.

Q. Did you have a clear view of this?

A. Yes, sir.

Q. Now, when you were talking with Mr. Harrigan, you said that your wife told you about the charges?

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A. Yes, sir.

Q. When was this?

A. I don't remember if it was the first phone call or the second one, but she was the only one that told me, she said she heard I had gotten arrested on the radio and she told me Rockwell had been shot.

Q. Now, the impression yesterday was that you didn't see Mrs. Lane until after you saw your wife, is that correct?

A. No, I had seen my wife after I saw Mrs. Lane, but I had communicated with my wife.

Q. How long had you been with Mrs. Lane before you saw your wife?

A. I'd say about—I couldn't tell you the exact
page 2515 } time, but I would say half an hour to an hour,
maybe.

Q. It was a fairly long time?

A. It wasn't too long of a time, sir, my wife came up just as they were—Sergeant Alexander was photographing me, so you can find out when he was photographing me and you will know just when she came up, sir.

Q. In regard to Commonwealth's Exhibit No. 58A, 58B, I believe it is you explained that your dismissal on charge A was based upon your family interests and your moral obligations.

A. Well, mostly my disagreements with Rockwell were over the fact that I was leaving, going down to the farm and spending more time with Alice.

Q. Now, down at the farm, could Rockwell have gotten ahold of you by telephone?

A. No, sir, there is no phone.

Q. No phone at the farm?

A. No phone, no, sir.

Q. No phone close by?

A. No, sir, the closest phone, I think, is thirty miles away.

Q. Now, when you were at the farm, did you keep in touch with the American Nazi Party.

A. No, sir, I don't think I did.

page 2516 } Q. What was this moral obligation that you
were talking about?

A. Oh, I just felt that—well, one thing, for one thing, Rockwell didn't want me to marry Alice and I wanted to and she is a very loyal girl and I love her, and I just wanted this marriage to succeed and he didn't want me to marry her, and

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I just wanted to spend more time with her and do what I thought was right towards her and the kids.

Q. Now, I'd like to show you Commonwealth's Exhibit 5G and direct your attention to the fourth paragraph and ask you what kind of moral philosophy that is?

A. Well, what I meant here is that if a woman who is married to a man wants to go with another guy, and she really doesn't love the man she claims to love and there is no real love there so—

Q. Isn't that a communist doctrine of free love?

A. A what?

Mr. Harrigan: Objection.

The Court: Objection sustained.

Mr. Harrigan: Your Honor, we are fishing for a motive, I move to strike Mr. Hassan's remark.

Mr. Hassan: They are moving to strike what, Your Honor?

Mr. Harrigan: Your communist doctrine of page 2517 } free love.

The Court: The question was, "Isn't that a communist doctrine of free love"?

Mr. Hassan: That is exactly what it is.

The Court: Mr. Hassan isn't testifying and can't testify and the defendant didn't answer the question so there is no evidence on that, there is nothing to strike.

Mr. Harrigan: All right.

By Mr. Hassan:

Q. You stated that you went to Chicago and had some problem about flying back?

A. Yes, sir.

Q. What did you do while you were in Chicago?

A. Help organize some rallies and a march.

Q. Did you make any speeches?

A. Yes, sir.

Mr. Harrigan: Your Honor, Mr. Hassan is continually interjecting into the case Mr. Patler's activities and demonstrations and so forth and so on, and what he did in Chicago, what magazine he was involved with six years ago in New York, and it has nothing to do with the case in our opinion. It is not proper evidence, it doesn't tend to prove any fact in the case and if he made speeches in Chicago con-
page 2518 } cerning his political beliefs, it certainly should

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not have any effect on any motive or connection with this particular event.

The Court: Mr. Hassan is obviously leading up to something and he has not yet revealed what he is leading up to, so save your objection until he gets to his point.

Mr. Harrigan: All right.

By Mr. Hassan:

Q. I'd like to show you this copy of the Storm Trooper Magazine and ask you, sir, whether or not you were the editor of that copy of the magazine?

A. I was.

Mr. Hassan: His activities in Chicago.

A. Yes, sir.

Q. I would like this marked as Commonwealth's Exhibit No. 70.

(The magazine previously referred to was marked Commonwealth's Exhibit No. 70 for identification.)

Did you write what that says about what you did in Chicago?

A. Both Rockwell and I wrote what it says page 2519 } in there that I did in Chicago.

Mr. Morris: May we see it, too?

Mr. Hassan: I am sorry, I thought you had a copy.

Mr. Morris: We don't know if we have a copy of this one, though.

Mr. Harrigan: Which article are you referring to?

Mr. Hassan: His activities in Chicago.

Mr. Harrigan: This one (indicating)?

Mr. Hassan: All the way through the book, in various places.

I'd like to offer this in evidence as his article in connection with his activities in a magazine in which he would be editor.

The Court: This relates somewhat to the article concerning activities in Chicago, does it, this seems to run all through it.

Mr. Hassan: Yes, it does, Your Honor.

The Court: Does the defense object?

Mr. Harrigan: Yes, Your Honor.

The Court: What is the purpose for which it is offered, Mr. Hassan?

John D. Patler

Mr. Hassan: I anticipated the objection, Your Honor, I don't want to withdraw it, but we have argued it
page 2520 } so many times, I don't believe there is anything
to be gained except another simmering recess.

The Court: All right, the objection is sustained.

By Mr. Hassan:

Q. You did make speeches in Chicago, did you not?

A. Yes, sir.

Q. Did you use a microphone?

A. No, sir.

Q. You don't ordinarily talk as soft as you are now?

A. No, sir.

Q. In fact, you talk a lot louder without a microphone?

A. I have never been as scared as I am now.

Q. How about that first speech you made at 5th and E Street in Washington, D. C.?

The Court: What about it, Mr. Hassan?

Mr. Hassan: He said he had never been as scared as he is now, I am wondering if he was as scared then as he is now.

The Witness: No, because I had a lot of people around me, helping me.

Mr. Hassan: You were scared then, were you not?

Mr. Harrigan: Your Honor, what difference does that make if he was scared in a speech at 5th and E
page 2521 } Streets in D. C.?

The Court: I can not see the relevance of it.

By Mr. Hassan:

Q. I ask you to examine this and tell me whether or not it contains an autobiography of you?

A. Yes, sir.

Q. Did you write it?

A. Both Commander Rockwell and I wrote it.

Q. Does that say anything about 5th and E Streets, I think you will find it on page 32.

A. Yes, sir.

Q. Does it say anything about how loud your voice was?

A. Yes, sir.

Q. You wrote that, didn't you?

A. Yes, sir.

Q. I'd like to have that marked Commonwealth's Exhibit No. 71.

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(The article previously referred to was marked Commonwealth's Exhibit No. 71 for identification.)

I'm going to offer that, Your Honor, for the same reasons, the same ruling is expected.

page 2522 } The Court: The same objection?
Mr. Harrigan: The same objection.
The Court: Sustained.

Mr. Harrigan: We further object to the constant repeated attempt to interject evidence in this case that has no bearing, that is all we have been doing all morning, so far, that is all we did most of the evening last night, just continual repeats to show he published this magazine, he was involved in this activity, he was doing this, he was doing that and it is just an attempt to slander Mr. Patler and put him in a bad light because of his prior activities, which everybody knows about anyway. We object to the constant, repeated attempts to do this.

The Court: The Commonwealth has a right to offer evidence, it may not be received, but they have a right to make a tender of it.

Mr. Hassan: I don't think you slander someone by bringing what they, themselves, did, Your Honor.

The Court: Go ahead, Mr. Hassan.

By Mr. Hassan:

Q. Now, you accused Commander Rockwell of using party funds for private purposes, did you not?

A. Yes, sir.

Q. Did there come a time when you got a divorce?
page 2523 }

A. A divorce from my first wife?

Q. Yes, sir, where did you get the divorce?

A. She got the divorce.

Q. Did you go anywhere with that divorce?

A. No, sir.

Q. Did you get any funds for that divorce?

A. Not from the party, sir.

Q. From George Lincoln Rockwell?

A. No.

Q. Did you request money from him?

A. No, sir, I got money from Barbara von Goetz.

John D. Patler

Q. From Barbara von Goetz?

A. Yes, sir.

Q. She is the one you got the money from?

A. Yes, sir.

Q. Now, when your things were taken from Spotsylvania and brought back to Arlington, you said you did not get them all back, what did you not get back?

A. I don't recall everything, I had a tremendous amount of stuff down there, I didn't get back specifically that I can recall, at that time, I did not receive about two to three hundred dollars worth of materials. I got my German Shepherd dog,

page 2524 } Zorba, back, I got my drafting set back, I left some shoes and boots over there, I left some clothes, and I don't know, just a batch of stuff I didn't take with me.

Q. What clothing?

A. I don't remember, sir.

Q. Now, you said yesterday that you were not surprised about leaving?

A. No, sir.

Q. And you knew it was coming?

A. Yes, sir.

Q. And you said you were going to go your way?

A. Yes, sir.

Q. What was your way?

A. Just back to my family and try to make something of myself.

Q. Just forget it all?

A. Well, I knew I could never forget my political, I mean something like that you don't lose that instantaneously, it is just a gradual thing.

Q. When did you make your mind up that you were going to go after some education?

A. I'd say about the first month after I was away from the party, I enrolled in Corcoran School of Art, to begin with.

Q. You didn't make your mind up about that
page 2525 } prior to leaving the party?

A. I thought about it.

Q. You thought about it, did you ever express yourself about it?

A. I don't recall, sir.

Q. Let me again show you Commonwealth's Exhibit 5G and direct your attention to the last paragraph, by the way, when did you write this?

John D. Patler

A. You want me to tell you when I wrote this?

Q. Yes, when did you write it?

A. I would say the early part of 1966.

Q. At that time were you thinking about education?

A. About going to school?

Q. Yes.

A. No, sir.

Q. You were not?

A. No, sir.

Q. Doesn't the last paragraph indicate that you wanted more education so that you could better work on college students on behalf of the American Nazi Party?

A. No, what it does point out, it is a reply to Rockwell who said that he felt I did not have enough book learning and I told him I was studying some books and trying to catch up on my lack of book learning.

Q. For what reason?

A. For debates with college kids.

Q. Is that the same reason why you wanted an education after you got out?

A. No, sir.

Q. When did you originally apply to Corcoran Art School?

A. Sir?

Q. When did you originally apply to Corcoran Art School?

A. I think it was June or July, I think it was June.

Q. That is the first time.

A. Do you mean have I ever attended Corcoran School of Art before?

Q. I asked you when you first applied to Corcoran Art School.

A. June, I think it was.

Q. That is the first time?

Mr. Harrigan: What year?

The Witness: 1967.

By Mr. Hassan:

Q. Did you ever apply before that?

A. Yes, sir.

page 2527 } Q. When was that?

A. An awful long time ago.

Q. Was it 1961?

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A. Right, 1961.

Q. Did you complete that course?

A. No, sir.

Q. Now, a David Hughes was mentioned.

A. Yes, sir.

Q. When was the last time you had contact with David Hughes?

A. Well, he's written me all while I have been in jail.

Q. You had a letter written to you while you have been in jail?

A. Two letters.

Q. Prior to that time?

A. I spoke to him once on the phone while I was out of the party.

Q. Once on the phone while you were out of the party?

A. Yes, sir.

Q. Did you correspond with him between April and August?

A. Yes, sir.

Q. How many times?

A. I don't know, just several letters back and page 2528 } forth.

Q. Was it about the organization that you said yesterday was a one-man organization?

A. No, we talked mostly about his going to college, and I told him I was thinking about doing the same.

Q. What was the name of the organization?

A. White Power Committee, sir.

Q. Did you say yesterday you just had a few leaflets and you engaged in one situation and it was a one-man party and that is all there was to it?

A. Well, Bailey and I were sort of embarrassed and we just wanted to look like there was some organized operation, not like one guy or two guys, there was no effort to organize or form an organization or anything like that, it was just to put up a front.

Q. There was no effort to organize at all?

A. No, sir.

Mr. Harrigan: Your Honor, I would object to going into that any further, I don't think it is relevant whether he belongs to the Democrat Party or the Republican Party or the one-man White Power Committee Party.

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The Court: His political views aren't relevant, Mr. Hassan may have some other purpose, I will, at least, let him come to his point before I rule.

page 2529 } Mr. Harrigan: All right, Your Honor.

By Mr. Hassan:

Q. Now, you said there was no bitterness, I show you, sir, a photostatic copy which purports to be a letter signed by you, and ask you whether or not that letter was written by you?

A. Yes, sir.

Q. I'd like to have that marked Commonwealth's Exhibit for identification No. 72.

(The letter previously referred to was marked Commonwealth's Exhibit No. 72 for identification.)

Does that letter, in the second paragraph, express bitterness against George Lincoln Rockwell? Please answer yes or no.

A. Bitterness against George Lincoln Rockwell, let me read it again, you say does it express bitterness, what do you mean by bitterness?

Q. I said please answer yes or no, does it express bitterness against George Lincoln Rockwell in the second paragraph?

Is that letter dated May 22nd, 1967?

A. There is handwriting up there, but it is page 2530 } not my handwriting, that says 5/22/67.

Mr. Harrigan: We would like him to lay a foundation, Your Honor.

The Court: Well, actually, the question asked for a conclusion, what he means by bitterness may not be what you mean by bitterness. He says what do you mean by bitterness, maybe you better tell him, define the term and let him answer.

By Mr. Hassan:

Q. I will specifically ask him whether or not it says he is going to expose George Lincoln Rockwell as a liar and a hypocrite?

A. That is what it says.

Q. Did you write that in May, if you know?

A. I don't recall that, sir.

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Mr. Harrigan: Where's the original?

Mr. Hassan: I don't know.

Mr. Harrigan: Where did you get that one?

Mr. Hassan: I got that from a confidential informer.

Mr. Harrigan: I see.

Mr. Hassan: It is John Patler's signature and he acknowledged it.

Mr. Morris: Whose date is on the top of that letter?

Mr. Hassan: I didn't put anything on it, who page 2531 { did?

Mr. Morris: What did your confidential informant put on it?

Mr. Hassan: I don't know.

Mr. Morris: Let's get him in here and ask him.

The Court: Are you offering this now, Mr. Hassan, in evidence?

Mr. Hassan: Not at the moment, Your Honor, I will offer it when I get through with some more, I will offer them all together so the jury won't have to get so much time out, and everybody can be busy reading, I have several.

Mr. Harrigan: Your Honor, I object to cross-examining on every item before it is in evidence, I think we should have an opportunity to determine whether it is proper to go in evidence before we hear testimony. It would probably save even more time.

The Court: He has identified the document, now he is not proceeding to cross-examine him any further on that, I would not let him do that unless he put it in evidence, but he may go so far as to identify it.

By Mr. Hassan:

Q. I ask you to examine that, sir, and I ask you whether or not that is a letter you wrote?

A. Yes, sir.

page 2532 { Q. Is that plans of an organization such as you were talking about in your testimony yesterday?

A. Yes, sir.

Q. What is the White People's Army of Liberation?

A. That was a title Booker and I were tossing around.

The Court: Mr. Taylor, is that 73?

The Clerk: 73, Your Honor.

Mr. Hassan: I offer that in evidence, Your Honor.

John D. Patler

By Mr. Hassan :

Q. Did you have difficulty with Chris Vidnjovich?

A. In Chicago?

Q. At anytime?

A. To the best of my recollection, no.

Q. Did you express yourself in June, in 1967, as liking him?

A. In 1967?

Q. Yes, sir.

A. I would say so, yes, sir.

Q. Did there come a time when you saw him in June of 1967?

A. Yes, sir.

Q. Did you express yourself after you saw him in June of 1967?

page 2533 } A. Yes, sir.

Q. Were you driving a Mustang when you saw him?

A. No, sir, my wife was.

Q. At no time did you drive one alone?

A. No, sir.

Q. Did you see him twice or three times?

A. Twice.

Q. Did you have plans to go to Florida on August 25th, 26th, and 27th?

A. Yes, sir.

Q. When did you cancel those plans?

A. My wife and I were going to go down and we decided we didn't have enough money to.

Q. How were you going to go down?

A. We were thinking about driving down.

Q. With who?

A. My wife and I.

Q. Just you and your wife?

A. Yes, sir.

Q. Did there come a time when you were thinking of going some other way?

A. I think I asked Chris Bailey if he wanted to go and at first he said he would, and then he said he didn't want to.

page 2534 } Q. Is he the only one you asked or you planned to ask?

A. I don't recall at this time, sir.

Q. On August 9th, did you send a letter to Mr. Booker, in

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which you said you were going to ask Joe Carrell for a ride?

A. I think I might have said that, sir, yes, sir.

Q. Did you ask him?

A. No, sir.

Q. Did you intend for your wife to go on that trip with him?

A. No, see I was trying to arrange to go down there with Chris or someone else and then my wife suggested we go down together and then we got together and we figured we couldn't make it, even if we wanted to, because we just didn't have the money.

Q. Now, I'd like to have Commonwealth's Exhibit No. 73 admitted at this time, Your Honor.

The Court: Is there an objection.

Mr. Harrigan: Yes, Your Honor.

The Court: Is this offered just for the purpose of impeachment, Mr. Hassan?

Mr. Hassan: It is offered for the purpose of impeachment to show it was not a one-man organization as page 2535 } he testified yesterday and that it was going along after the period of time he said it was defunct.

The Court: What is the basis of the objection?

Mr. Harrigan: The basis of the objection is twofold, he said that proved that this Student White Power Committee was going on for some time, there's nothing in the record when he first originated this White Power Committee, and what ever that has to do with this case, I am not sure anyway. That letter doesn't indicate anything was going on. It indicates that he wrote to Mr. Booker and that they might try to work something out on the White Power Committee and it indicates that the thing wasn't even formed yet, apparently, because he was thinking of the symbols of some sort.

I don't know what that has to do with this trial, he says it is for the purpose of an inconsistent statement, I don't know what inconsistent statement, he is talking about, he admitted he was involved in this White Power Committee, he's yet to show a single other person in the whole wide world that ever belonged to it and there are one or two other matters that have nothing to do with this case.

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The Court: The note I made on his testimony concerning the White Power Committee, which was on direct examination, was to this effect, that the White Power Committee consisted of him and Chris Bailey, it was organized to protest a Stokely Carmichael demonstration, it lasted only a short time and put out only one leaflet, the letter is written to a third person, Booker, and it mentions that he and Chris Bailey are in this thing, but it doesn't mention that anybody else is in it and seems to be a blank thing asking Booker to participate and speaks of future plans, rather than anything that happened in the past. It does not seem to me, Mr. Hassan, that it does contradict anything he says, if you think otherwise, tell me how it does.

Mr. Hassan: Let me ask him a couple more questions.

The Court: Go ahead.

By Mr. Hassan:

Q. Did there come a time when you obtained a post office box in Chicago for this organization?

A. I have no knowledge of that, sir, that is my recollection, but I don't think there was.

Q. You have no knowledge of that?

A. I say to the best of my recollection, I don't recall.

Mr. Harrigan: Your Honor, I object to the whole line of questioning, so what if he belonged to a White Power Committee or whatever it was, it's been established that he meant to form one.

page 2537 } The Court: I gather that Mr. Hassan is proceeding only on the basis of impeaching his direct testimony and I am, at this point, trying to find out if there is any conflict between the contents of this letter and anything he testified to.

Mr. Hassan: I show you a letter purporting to be signed by you, dated August 9, 1967, and ask you, sir, whether or not that is the letter you wrote, and whether it refers to such a box in Chicago?

The Witness: Yes, sir.

Mr. Hassan: I would like to have that marked as a Commonwealth Exhibit, do you want to see it first?

The Court: No, thank you.

Mr. Hassan, are you offering all three of these at this time, 72, 73, and 74?

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Mr. Hassan: Not 72, Your Honor, it relates to a different subject matter, if I recall correctly.

The Court: 73 and 74—

Mr. Hassan: 72 refers to bitterness, this refers to the organization which he said was a one-man organization.

The Court: You are offering 73 and 74, are you?

Mr. Hassan: 73 and 74, Your Honor.

The Court: Have you gentlemen stated your page 2538 } objections as fully as you wish to on those, Mr. Harrigan?

Mr. Harrigan: Yes, Your Honor, 74 I don't know what the purpose is of offering that, but there is a statement in there—I have received some news which obviously—the question asked was, do you know if any post office boxes were open in Chicago?

Mr. Hassan: The question asked was did that refer to a post office box in Chicago, and he said yes.

Mr. Harrigan: Yes, he is trying to offer that for the truth, if one was opened, I don't think he can do that, I don't think he can offer it for the truth of anything in those letters because so many of them are from someone else to John and I object to all of them on the ground that they are not relevant to anything in issue.

He may show, if he likes, that John made an inconsistent statement and I don't think he's shown that, but that is all he can show and I think even if that is the purpose, then the jury ought to be instructed that they are inconsistent statements, that is what it means, nothing more, but the matters in which he is cross-examining on are so collateral and remote from anything in issue here that I am sure if he takes the next three hours examining him and goes so far back, he is going to catch him in something because no—
page 2539 } body can remember that much.

The Court: Mr. Patler, let me ask you about this one which is marked 73, you say that is not your date at the top of it?

The Witness: No, sir.

The Court: It refers to some event, can you tell me when it was written, approximately? Can you tell me just this much, was it written after you left the American Nazi Party?

The Witness: I don't recall, sir.

Mr. Harrigan: Another objection for the record, Your Honor, that is not the best evidence of photostats or whatever they are.

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The Court: I think Mr. Patler has identified that it was a copy of a letter he wrote, which would take care of it. the objection is overruled and 73 and 74 will be admitted as exhibits for the Commonwealth, but only for the purpose of impeachment and only to the extent that the jury feels they are impeaching.

Ladies and Gentlemen of the jury, these are letters written by the defendant which are being admitted into evidence only for the purpose of having you weigh whether or not they conflict with statements he made on his direct page 2540 } examination. The truth of the contents of these letters is not in issue and is not to be considered by you. The only purpose for which they are to be considered is to determine whether or not he has made any inconsistent statements in his testimony, they are offered for no other purpose than that, it is up to you to decide whether or not they are, indeed, inconsistent and if so, to what degree.

(The documents previously identified as Commonwealth's Exhibits No. 73 and No. 74 were received in evidence.)

Mr. Harrigan: I except to the Court's ruling.

Mr. Hassan: Your Honor, 72 is offered.

Mr. Harrigan: We except to the Court's ruling admitting 73 and 74 and I would just as soon have the jury look at them right now and not have them mixed up with 270 other papers.

Mr. Hassan: They might as well look at all three at the same time, if they're going to get 72, which the defendant, on direct examination and on cross-examination, said he left the party without any bitterness, no ill feeling, Exhibit 72 is a letter which, I feel, impeaches that statement and I offer it for that purpose.

page 2541 } Mr. Harrigan: Mr. Hassan, to the best of my recollection, the Court asked him what he meant by bitterness and he explained what he meant by bitterness and it was never pursued, it says, "We are going to expose Rockwell as a liar and a hypocrite," that means he left the party over bitterness?

The Court: Mr. Patler, I show you 72, in which that statement occurs, and ask you if that was written after your departure from the American Nazi Party?

The Witness: Yes, sir.

The Court: Can you say approximately when it was writ-

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ten, would the date be correct on that? That is in the upper right-hand corner of it, or if not, do you know what the date would have been?

The Witness: I couldn't answer that, sir, I don't know, I don't remember.

The Court: All right.

Have you completed stating your objections?

Mr. Harrigan: Yes, Your Honor.

The Court: The objection is overruled and this will be admitted, I do not consider that this is impeaching necessarily, the jury may think that it is, but I will admit this on a different basis and that is that it tends to show the state of mind of the accused after receiving his discharge page 2542 } and can be weighed by the jury to the extent that they feel that it bears on motive, so it is admitted for the same purpose as 5G was admitted.

(The document previously identified as Commonwealth's Exhibit No. 72 was received in evidence.)

Mr. Hassan: In view of the Court's statement, I would like to show him another letter, maybe we will make it four, and ask you, sir, whether or not, this is a letter that you wrote?

Mr. Harrigan: Exception to the Court's ruling on the ground that there is evidence in the record that he admitted calling him a liar and he admitted calling him dishonest. That doesn't add anything more than what has already been testified to by thirty or forty people.

Mr. Morris: Before he answers, Your Honor, we would like to look at that evidence, too.

Mr. Hassan: Before he answers whether it is a letter?

Mr. Morris: Yes.

Mr. Hassan: May I have this marked as Commonwealth's Exhibit No. 75?

page 2543 } (The document previously referred to was marked Commonwealth's Exhibit No. 75 for identification.)

Now, I will ask you to look at the next to last paragraph and tell me whether or not that is an expression of bitterness?

Mr. Harrigan: Objection, Your Honor, it calls for a conclusion, I think it will speak for itself.

The Court: Objection sustained, let me see the letter.

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Mr. Patler, did you date that, is that your date in the upper right-hand corner?

The Witness: No, sir.

The Court: Have you any way of telling when that was written?

The Witness: It was written after I left the party, sir.

The Court: Are you offering it, Mr. Hassan?

Mr. Hassan: I am offering it, Your Honor.

The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor.

The Court: What is the basis?

Mr. Harrigan: Your Honor, these dates page 2544 } haven't been explained on the top, for one thing, every one is dated by somebody, every letter is a photostat, I don't know where the originals are and the objection of that one is, it says the same thing that every other one says, we have got a multitude of correspondence in that Rockwell is a liar and we have heard it, we admit he said it. He said it from the witness stand, he said he called him a liar, he said he called him dishonest, this just says it again and isn't going to make it any more true. I don't think it adds a thing to the case, it is cumulative like so many of these others are.

The Court: These things that haven't come after his discharge from the party seem to me to be admissible for the purpose of showing his state of mind and not just furnishing details of the quarrel that led to the discharge which was the reason so much of this other correspondence was excluded.

It may be that the jury will conclude that it has no weight, but that is for them to decide, I think the test of admissibility has been met, it's been identified as a letter of the defendant and a declaration by him concerning his state of mind toward Rockwell.

It will be admitted as Commonwealth's Exhibit 75.

page 2545 } (The document previously identified as Commonwealth's Exhibit No. 75 was received in evidence.)

Now, ladies and gentlemen, I will also add the further cautionary instruction that most of these photostats of letters have dates written in the upper right-hand corner. The defendant has said that is not his writing and, indeed, it does

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not appear to be, those dates must be disregarded. We don't know who put them on there, the relevance of these are to be tested only by what the defendant has said as to the time when they were written.

Now, that is all of these, Mr. Hassan?

Mr. Hassan: Yes, on that.

Mr. Patler, was that written approximately two weeks after you were dismissed from the party, it is April the 19th?

The Witness: Yes, sir.

Mr. Hassan: I think that the time is approximated by the time on the others.

The Court: Now, the jury has a bit of reading to do, I would suggest to you gentlemen, if you have no objection to this, I will excuse the jury to the jury room to page 2546 } take a recess, while they are out, with instructions not to discuss them, but just to read them as silently as they would if they were here and have them read it while the Court is in recess.

Mr. Harrigan: No, Your Honor.

Mr. Hassan: Would the defendant object?

The Witness: I have no objection at all, they may read all those letters.

The Court: Ladies and gentlemen, we will take a recess, you may read those letters while you are out, you are instructed not to discuss these letters nor come to any conclusion, but just read them as silently as if you were here. When you are through, tell the bailiff and we may reconvene.

Mr. Harrigan: Note my exception to the Court's ruling admitting all the documents for the reasons stated.

The Court: Court will recess on call.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

Mr. Hassan?

Mr. Hassan: I have no further questions.

The Court: Redirect, gentlemen?

REDIRECT EXAMINATION

page 2547 } By Mr. Harrigan:

Q. Now, Mr. Patler, all those letters that we were talking about this morning, referring to this White

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Power Committee, did there come a time when that idea was just dropped?

A. Yes, sir.

Q. Has there been any further activity regarding that particular idea?

A. No, sir.

Q. Now, you said that you saw Mr. Vednjevich on two occasions in June, is that right?

A. Yes, sir.

Q. What was the purpose of his visit to you?

A. He told me that Rockwell had wanted me to come back and do some art work for him, to see if he could get me to re-join the party and get back in the swing of things.

Q. Rockwell was working on a book at that time?

A. Yes, sir, Vednjevich told me he was working on a new book.

Q. What was the name of the book?

A. I think the name of the book was going to be "White Power," it was going to be similar to a 400-page book he had written four years ago—five years ago.

page 2548 } Q. Now, during these conversations you had with Vednjevich, was there any conversation concerning Rockwell as an evil genius?

A. I heard Vednjevich first say in this courtroom that I referred to Rockwell as an evil genius, I never made any such statement, what I did tell him was Rockwell had some good traits and he had some bad traits, at no time did I call him an evil genius.

Q. And he had to be stopped?

A. I never said that either.

Q. Now, the primary purpose then of Vednjevich seeing you was to see you as a courier for Rockwell to bring you back?

A. It was a very friendly encounter, we went up to Tops and had coffee and a hamburger, that was the first occasion.

Mr. Harrigan: I didn't ask you that, I asked you if the primary purpose was to ask you if you would come back into the organization?

A. Right.

Q. And you refused?

A. Yes, sir.

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Q. Now, this Pace that testified, when you were down in Spotsylvania, was Pace down there?

page 2549 } Mr. Hassan: Objection, Your Honor, not within the scope of cross-examination.

Mr. Harrigan: He discussed Spotsylvania and when he was down there.

Mr. Hassan: Anything I said about Spotsylvania referred to the time when the commander brought his clothes up here.

The Court: I believe that's right.

Mr. Morris: We will call him again, Your Honor.

The Court: No, I don't want to open this up on recross-examination, I don't think you would either, I think the objection is well taken, I don't remember anything about that—no, don't answer, Mr. Patler. I don't think there was anything on cross-examination other than the interlude of Rockwell moving his clothes.

Mr. Harrigan: All right, that is what it is leading to, Your Honor.

The Court: If it relates specifically to that, go ahead.

Mr. Hassan: If Your Honor please, there is no foundation that Pace was there at that time.

Mr. Harrigan: Pace said that, well, Pace didn't say that, but—

page 2550 } The Court: If it relates to that episode—

Mr. Harrigan: That episode?

The Court: You may go ahead.

By Mr. Harrigan:

Q. Do you have your own room at Spotsylvania?

A. Yes, sir.

Q. Was it locked?

A. Yes, sir.

Q. In this place in Spotsylvania, how big was it?

Mr. Hassan: If Your Honor please, Pace was in Europe in the Army when this episode he is coming to was supposed to have occurred.

The Court: He's gotten away from Pace now and is asking him about the room, I see nothing wrong with that.

Mr. Hassan: That is not within the scope of cross-examination, either.

The Court: He says he is coming to the episode of the re-

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moval of the clothing which was within the scope of cross-examination, I will let him lead up to it.

By Mr. Harrigan:

Q. You had your own room, how big was your room?

A. Just about as big as my cell, just twelve by eight, something like that.

page 2551 } Q. How big was the whole building?

A. One hundred ten feet long, it was a reconverted chicken coop, and about fourteen feet wide.

Q. Now, this coat that the Commonwealth has marked in evidence, have you ever worn that coat at any time at all?

Mr. Hassan: That is outside the direct, too, he didn't get to that when he had his direct examination yesterday, he was right there and held it, I didn't ask him about it, I couldn't, that wasn't within the scope of direct examination.

Mr. Harrigan: I think he went everywhere else but the direct examination.

The Court: No, I don't think he did, the objection is sustained.

Mr. Harrigan: Then, I would like to recall him just for that question, Your Honor, I thought I asked him that, but my other counsel told me I didn't.

The Court: All right, leave is granted to do it.

Mr. Harrigan: Thank you, Your Honor.

This coat that they have introduced in evidence, did you ever wear that coat at any time, or see that coat?

The Witness: No, sir.

page 2552 } The Court: What is that, Mr. Hassan, Commonwealth's 43?

Mr. Hassan: 43, I believe, Your Honor.

By Mr. Harrigan:

Q. Now, these letters reflect that you called Commander Rockwell a liar and also that he was dishonest and you admit that?

A. I admit that and Booker and I had corresponded back and forth, and he called Rockwell a liar and dishonorable, also.

Q. As a matter of fact, just everybody who got out of the party had something to say about it, didn't they?

A. Yes, sir.

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Q. A lot of people who were in the party had a great deal to say about Rockwell?

A. I would say that more people out of the party than in the party had a lot to say about it.

Q. Have you ever heard the term half-penny Hitler?

A. Yes, I know who coined it, I think it was Mayor Wagner in New York, a long time ago.

Q. So, it wasn't uncommon for many people to comment on Rockwell's activities, party members and outside the party?

A. Yes, sir.

Q. Mr. Hassan said that some of these letters that he's introduced, where you called him a liar and dis-
page 2553 } honorable, reflect bitterness on your part.

Mr. Hassan: I am going to object, Your Honor, I don't think he can draw conclusions any more than I can.

The Court: That objection is well taken, but you may not have finished your inquiry, what were you going to ask him?

By Mr. Harrigan:

Q. The question was, were you bitter, violently bitter as he attempted to suggest?

A. No, sir.

Q. Now, Mr. Hassan asked you about this route that you had taken down Fairfax Drive over to Glebe Road, now, will you tell the jury what the condition of the grass and bushes, if any and so forth, was as you walked through those paths down there?

A. Well, I remember the day before, it had rained a whole lot, the whole day, and that night, and the grass and bushes were wet.

Q. All right, now, your shoes, what were their condition?

A. My shoes were wet from walking in the grass and along, just along the grass there.

Q. What about your pants?

page 2554 } A. And from brushing up against bushes.

Q. Now, there was some testimony about your pants were soaking wet and it was even along here (indicating).

Mr. Hassan: If Your Honor please, there wasn't one single thing in direct examination about this yesterday, and consequently, I was unable to have any cross-examination on it. I think he is now going beyond the scope of redirect.

Chun Chen

The Court: I think you are, too, Mr. Harrigan, I can't recall that in his testimony.

Mr. Harrigan: That is all.

The Court: Mr. Patler, you may stand down on to the counsel table.

Ladies and gentlemen, at this time we will recess for lunch, until 1:45.

(Whereupon, the luncheon recess was taken.)

The Court: Are you ready?

Mr. Harrigan: Yes, Your Honor.

I call Mr. Chen.

Whereupon, CHUN CHEN, was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

page 2555 } DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. My name is Chun Chen.

Q. Where do you live?

A. 800 4th Street, Southwest.

Q. Now, are you a friend of Mr. Patler's.

A. Yes, sir, classmate.

Q. Now, where do you work?

A. I work as a student at Corcoran School of Art.

Q. Where is that located?

A. 17th Street and New York Avenue.

Q. Washington, D. C.?

A. Yes, sir, Northwest.

Q. Now, calling your attention to June of this year, were you working at Corcoran Art School at that time as a student and what kind of work?

A. As a monitor.

Q. What is a monitor?

A. A student who is taking care of the presence and absence of the students in the class.

Q. Now, in June of 1967 was John Patler registered as a student at Corcoran Art Gallery?

page 2556 } A. Yes, he was.

Chun Chen

Q. What were the hours of that class?

A. From 1:00 to 4:00 p. m.

Q. That would be 1:00 to 4:00 in the afternoon?

A. Yes, sir.

Q. Now, were you serving in the capacity as a monitor taking the roll on students present and absent during June?

A. Yes, sir, I was.

Q. Now, do you have a book that you marked that in?

A. This is the book (indicating).

Q. May I see that?

Now, would you tell the jury in what fashion you check whether students are there or not there?

A. I check the student's name, at usually 1:30 to 1:45.

Q. What do you check it against, the student, himself?

A. Yes. I work on easel and painting and I walk around and see who is in and who is not there at that time, so I mark. I check if he or she is there and an A as in apple, when at that time 1:30 to 1:45 they are not there, an A as in absent if he or she isn't there.

Q. Would you look at your book for June 27, 1967, and see if you have a John Patler registered for an page 2557 } afternoon class between 1:00 and 4:00?

A. To the best of my knowledge, he was there.

Q. Do you have a John Patler listed in your book?

A. Yes.

Q. Now, checking over to June 27th, the class between 1:00 and 4:00, was John Patler at the Corcoran Art Studio for that class?

A. Yes, he was.

Q. Now, those check marks, do you make them yourself?

A. To the best of my knowledge, yes.

Q. That is all.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Would you examine that book of yours, sir, and tell me whether or not John Patler was there on the 26th day of August?

A. I marked a check.

Q. He's marked a check on the 26th. Would it surprise you to know he was in jail that day? No further questions.

Chun Chen

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Let me see your book. Now, check your book again and look and see whether you have any marks at all page 2558 } in this book from the 4th day of August on. That 26th day you are looking at, wasn't that the 26th day of July? The class ended on the 4th day of August.

Mr. Hassan: If Your Honor please, I'm going to insist he allow this witness to answer without interrupting.

The Witness: The class was there on the 4th.

By Mr. Harrigan:

Q. When did the class end?

A. The 4th of August.

Q. The 4th of August?

A. Yes, sir.

Q. Do you have any marks after the 4th of August at all?

A. The class was out. There was no student in the class.

The school was over.

Q. The school was over the 4th of August.

I'd like to let the jury look at the book.

Mr. Hassan: I'd like to look at it again. I asked the question. I didn't point to anything in there.

Mr. Harrigan: I made the same mistake when I approached him.

Mr. Hassan: I didn't make a mistake.

By Mr. Hassan:

page 2559 } Q. I'd like to ask you, sir, what this writing is and if you wrote it?

A. This one here (indicating)?

Q. Yes.

A. That is for George Washington students.

Q. George Washington students?

A. Yes.

Q. What month is that?

A. This one is the month of July.

Q. That is the month of July?

A. That is a continuation from here (indicating).

Chun Chen

Q. That is the month of June?

A. Yes.

Q. That is not August up here?

A. The August starts from here, you see, the 31st of July and it starts the 1st of August until the end of the school day.

Q. I don't understand Chinese, buy maybe you're right. I asked you for August. That is what you said. That is what it looked like to me. Do you want the jury to look at it?

The Court: I take it there is no objection.

Mr. Hassan: No, sir, if they can understand Chinese, it is all right with me.

page 2560 } The Court: Defendant's EE.

(The item previously referred to was marked Defendant's Exhibit No. EE for identification and received in evidence.)

The Court: Any further questions, Mr. Harrigan?

Mr. Harrigan: No further questions.

The only question I had, I was just wondering if the jury had any trouble reading this or understanding this. I don't want to leave it like that if they haven't.

The Court: If the jury has any questions, they may ask them.

Mr. Harrigan: I guess they haven't got any.

The Court: Mr. Hassan, did you complete your cross-examination?

Mr. Hassan: Yes, I completed it.

The Court: All right. May the witness be excused.

Mr. Harrigan: Yes, Your Honor. I'd like to offer this and I suppose he will want it back.

The Court: Do you need it back?

The Witness: Yes.

The Court: I suggest this. It hasn't been marked in evidence as Defendant's EE. The Clerk can make page 2561 } a photostatic copy of those pages which are pertinent and then return it.

Mr. Harrigan: There's only three pages.

Mr. Hassan: As a matter of fact, I'd be glad to donate the price of a book. It would cost less to buy a new book than it would to photostat.

The Court: He's got to have the record for the school.

Robert A. Hunt

(Witness excused.)

Mr. Harrigan: Mr. Robert Hunt.

Whereupon, ROBERT A. HUNT was called as a witness on behalf of the defendant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please.

A. Robert A. Hunt.

Q. What is your occupation?

A. I am a private investigator.

Q. Were you hired to investigate this case by us?

A. Yes, sir.

Q. Now, during the course of that investigation, did you have occasion to pick up these three coats and mark them?

A. Yes, sir, I did.

Q. Now, I show you this first coat, Defendant's Exhibit CC, initials J P on it and some other initials with the date of 8/26, August 26th.

A. Those are my initials.

Q. Where did you get the coat from?

A. 2225 Lee Highway.

Q. Is that John Patler's home?

A. Yes, it is.

Q. I show you this black coat, Defendant's Exhibit BB, the initials of J in it and some other initials, marked 8/26. Would you look at that?

A. Yes, sir, those are my initials.

Q. Where did you get that from?

A. 2522 Lee Highway.

Q. When?

A. August 26th.

Q. Here's a plastic raincoat, Exhibit DD. Did you get that from the same address.

A. Yes, sir, I did.

Q. Those are your initials?

A. Yes, sir.

page 2563 } Q. You got that one—

Robert A. Hunt

A. November 14th.

Q. Now, did both these coats have Patler's initials on them when you picked them up August 26th?

A. Yes, sir.

Q. Are you under subpoena in this case?

A. Yes, sir, I was subpoenaed by the Commonwealth.

Q. Did you have occasion to talk to Alice and Patler, John Patler?

A. Yes, I did.

Q. As a result of those conversations, did you also have occasion to go to various business establishments?

A. Yes, sir, I did.

Q. Now, I show you Defendant's Exhibit No. M, have you ever seen that before?

A. Yes, sir.

Q. Have you been to that gas station?

A. Yes, I have.

Mr. Hassan: Before he testifies about that, I would like to see that.

Mr. Harrigan: That is a gas receipt.

Mr. Hassan: That is the customer's copy.

By Mr. Harrigan:

page 2564 } Q. The question was, had he been there. I didn't ask that, if I did, strike it.

Here's Exhibit N, receipt for postage, have you seen that?

A. Yes, sir.

Q. Here's a check signed by John Patler, marked 8/25. Have you seen that?

A. Yes, sir.

Q. Here's a receipt, Arlington Paper Company, for \$3.75 or \$3.86 with tax. Have you seen that?

A. Yes, sir.

Q. Now, directing your attention to September 1st, 1967, had you talked to Alice Patler and us concerning the various whereabouts of John Patler prior to that?

A. Yes, I did.

Q. Did there come a time when you got together with Alice Patler and she drove an automobile over this route?

A. Yes, sir.

Q. You went with her?

A. Yes, sir.

Q. Did anybody else go with you?

Robert A. Hunt

A. Mr. William Sheehy.

Q. Okay. Now, what date did you make this page 2565 } route?

A. Friday, September 1st, 1967.

Q. On or about what time did you leave the Patler home?

A. 10:00 o'clock a. m.

Q. Did you time this along the route as you went along?

A. Yes, sir.

Q. Did you have an idea how long it would take to make this entire route prior to starting it?

A. No, sir.

Q. Who else went with you there, Alice Patler, and yourself, and Bill Sheehy?

A. Right.

Q. Now, would you tell the jury, on that run exactly what you did and what time it took you to get to various places and the exact procedure that you followed?

A. May I refer to my notes?

Q. Go ahead.

Excuse me, I think there's one question.

A Juror: The mike seems too low for him.

Mr. Hassan: I would like to see the notes he is reading from.

Mr. Harrigan: He can cross-examine.

The Court: If he is merely using them to refresh his recollection, I don't think you do have that right. If they are to be put in evidence, you do. He may look at them page 2566 } and then testify independently after he has refreshed his recollection.

Mr. Hassan: If Your Honor please, I object. He has to identify independently and then if he does need it, he must state he needs it, not just pull them out.

The Court: That is true. Do you need your notes in order to refresh your recollection on the question that has been asked you?

The Witness: As to the time schedule.

The Court: All right. You may refer to them as to the time schedule.

Mr. Hassan: May I see them?

The Court: I don't think you have that right.

Mr. Hassan: Exception, please.

Robert A. Hunt

By Mr. Harrigan:

Q. Now, would you tell us exactly what time you left, where you went, and the exact procedure you went through making this run?

A. I left 2522 Lee Highway.

Q. What car were you driving?

A. A 1967

Mr. Hassan: Now, he is reading from the page 2567 } notes.

The Court: I will let him read from them, Mr. Hassan. Once he's testified, any privilege as to work product is gone and waived and after that, you may look at that and cross-examine from them, but before he has testified, I don't think you have the right to see his notes.

By Mr. Harrigan:

Q. Which car were you driving?

A. A 1967 Ford station wagon.

Q. Whose car was that?

A. Sam Ervin's.

Q. Was that the same car that was driven?

A. Yes.

Q. Tell us exactly what you did.

A. We left at 10:00 a. m. from the Cleveland side of the house, Cleveland Street.

Q. Who was driving?

A. Mrs. Patler.

Mr. Hassan: I am going to object. Unless he is going to tell us exactly what he did, Your Honor, I am going to object and interrupt.

By Mr. Harrigan:

Q. Go ahead. All right.

A. We left from the Cleveland Street side of page 2568 } the house and turned left on Lee Highway heading west. Mileage 2,709.2 miles. At 10:03 a. m., we arrived at the Scott Service Station at 3501 Lee Highway. We pulled to the left side of the pumps in the middle of the three pumps, which Mrs. Patler said was the exact spot she parked on August 25th. We allowed three minutes. The tank was full at the time and Mrs. Patler, on the 25th, had

Robert A. Hunt

got 16.8 gallons of gas, charged it, so we allowed three minutes to get the gas and for the attendant to make up a receipt. We left the gas station at 10:06. We entered Lee Highway, turned right, that is west, and continued towards Falls Church and Mrs. Patler stated that the traffic was about the same as on August 25th.

At 10:15 a. m., we turned off Lee Highway onto Park Avenue, made a right turn and then turned left on Little Falls Street. We waited for the red light at Broad Street, crossed Broad Street and then turned into the post office lot in Falls Church.

At 10:17 a. m., I entered the post office and looked for the post office box. I came back out at 10:20 and Mrs. Patler went in and picked up her mail. We had her open about ten letters which she said she did on the 25th there in the lot.

At 10:25 a. m., we left the post office, went
page 2569 } back to Lee Highway and returned to 2522 Lee Highway at 10:39 a. m. and Mrs. Patler was to pick up a check and at that time Sam Ervin, who was in the house, wanted to go to the Seven Eleven to buy a can of room deodorant because of a sewer odor from a backed up sewer.

So 10:44 a. m. Mrs. Patler came back and entered the car. We went to Fidelity National Bank, arrived at the bank at 10:49 a. m. I entered the bank and the mileage then on the car 2,220 miles and no tenths. She parked the car. I entered the bank at 10:50. I asked the teller for deposit slips to pause a few seconds and came back out at 10:52 a. m. We continued across from there and we came out of Wilson Boulevard next to the Giant Food Store, going through their lot, made a right turn into the post office.

I went into the post office at 10:57 and there was a lady going in to mail a package so I judged the time for mailing a package and picking up postage from this lady's mailing her package. I returned to the car at 10:59 a. m.

We went back. We entered Wilson Boulevard, turned right on Wilson Boulevard, went to North Hartford Street and then right on North Highland Street and Highland Street to Lee Highway. At Lee Highway, we crossed a median
strip and parked on North Monroe. This was at
page 2570 } 11:07 a. m. I left the car and walked up Lee Highway to Arlington Paper Supply. I went in and bought—killed a few minutes and bought a small note book, got a receipt for it. I returned back at the car at 11:14 a. m.

Robert A. Hunt

We left there and went straight ahead on North Monroe, turned left on 20th Street to North Kenmore, left on North Kenmore to Lee Highway, right on Lee Highway back toward the house.

Then, Mrs. Patler stated that she remembered she wanted to get a chicken for lunch. So we went up Cleveland Street to Key Boulevard to Fillmore Street, left on Fillmore to Franklin, right on Franklin to Garfield, then to Wilson Boulevard and we pulled into the Safeway lot. I entered the Safeway at 11:19 a. m. At 11:22 I returned to the car and discussed the price of the whole chicken as compared to the breast and chicken parts. Mrs. Patler stated that she wanted the chicken parts so I went back to the Safeway. At 11:28 I returned to the car again. We left from there and returned to 2522 Lee Highway at 11:31.

She stated—we parked at the back door. Mrs. Patler stated she carried the baby to the play pen. John carried the groceries to the basement that Sam Ervin had sitting on the floor.

page 2571 } Then, we allowed ten minutes in the house for
an argument and I left by the back door at
11:41 a. m.

Q. All right. Now, when you were making that run, I noticed that you allowed seven minutes in Arlington Paper Supply Company, is that right?

A. That's correct.

Q. So anything over seven minutes over there would be an add-on to 11:31?

A. Yes, sir.

Q. Now, how many minutes did you allow to go into the bank?

A. Two.

Q. How many minutes in the post office?

A. I believe it was two minutes. I entered at 10:57 and I came back at 10:59.

Q. The post office, two minutes.

A. Two minutes.

Q. Now, these places where you have stopped and parked your car and so forth, when you went to these various places, how did you happen to pick the place where you parked?

A. We told Mrs. Patler to park in the exact spot as possible that she parked on the 25th.

Q. How many places did you have occasion
page 2572 } to park in almost the exact spot?

Robert A. Hunt

A. All of them, with the exception of the Arlington Courthouse Post Office.

Q. How close were you to the exact spot then?

A. About five spaces away.

Q. Did there come a time when you got in touch with two young boys about making a trial run?

A. Yes, sir.

Q. Did you know either one of these two boys, the parties you were contacting?

A. No, sir.

Q. Did you contact two boys?

A. Yes, I did.

Q. Where did you take them?

A. To the shopping center, Old Dominion Hill Shopping Center.

Q. Did you make a run there?

A. Yes, sir, we did.

Q. Where did they start?

A. In front of this Good Will Store in the shopping center.

Q. Now, did they go over the wall or did they go somewhere else?

page 2573 } A. No, sir, they went out to Wilson Boulevard, around the corner of Liberty Street.

Q. Now, you didn't come off a roof?

A. No, sir.

Q. Why didn't you come off a roof and go through the back yard?

A. I didn't have permission to get on the roof and I didn't feel the boys should risk being injured coming off that roof.

Q. Now, have you had occasion to measure how far it is from the brick wall on the Good Will side to the roof or the over-hang?

A. Yes, sir, I have.

Q. I show you Commonwealth's Exhibit No. 18H, which purports to be a picture of the wall on the Good Will side to the roof, the over-hang. Will you hold it up and tell us where you measured? Hold it up to the jury so they can see it.

A. I measured to the top of this wall to the top of the over-hang.

Q. How far was it from there?

A. Eight feet, four inches.

Q. When you're standing up, could you reach it, yourself?

A. I can stand on my toes and hit the first
page 2574 } knuckle of these three fingers over the edge.

Robert A. Hunt

Q. Over the edge of what?

A. The over-hand. I can't reach the top of the roof.

Q. How tall are you?

A. Six foot, three and a half inches.

Q. When these two boys ran this route, did you tell them basically what route?

A. Yes, I did.

Q. Upon what information did you base that?

A. Information from the newspapers, the preliminary hearing.

Q. Where did they run?

A. Down Liberty Street into the park, past the bridge and up over the hill onto the ball diamond, and out Kenilworth Street to Washington Boulevard and right up to North Harrison Street.

Q. All right. How many of them ran that first time?

A. Two.

Q. Now, did you tell them where to run and where not to run?

A. Yes, sir, I did.

Q. Where did they run?

A. They ran down Liberty Street and
page 2575 } through the park and across the ball diamond.
When they hit the residential district, they
walked at a fast pace.

Q. How long did it take them to get to Washington Boulevard and Harrison Street?

A. Ten minutes.

Q. Did one of them keep walking?

A. Yes, sir, he did.

Q. How far did he get?

A. To North Woodstock Street and Glebe Road.

Q. How do you know that?

A. Sir?

Q. How do you know that?

A. I followed them.

Q. In your car or walking?

A. Yes, sir.

Q. In a car?

A. In a car.

Q. Now, do you know approximately how far it is from the shopping center to Harrison Street.

A. About a mile.

Robert A. Hunt

Q. Do you know how far it is from the shopping center to Glebe Road and Woodstock?

A. About two and a half miles.

page 2576 } Q. Do you know approximately how far it is from 2522 Lee Highway to the shopping center?

A. A little over three miles.

Q. How far is it from 2522 Lee Highway to North Harrison Street?

A. About two and a half miles.

Q. That is Harrison Street and Washington Boulevard I am talking about.

A. Right.

Q. Now, are you familiar with the area where Fairfax Drive dead ends and comes into 9th Road and then cuts over to George Mason Drive?

A. Yes, I am.

Q. All right. Now, would you come down here.

Mr. Hassan: I am going to object to this, Your Honor, until he lays a better foundation.

The Court: I am not exactly sure where he is going at this point. What are you coming to?

Mr. Harrigan: This area is the area where there's already been testimony that Mr. Patler came up Fairfax Drive came through that area over to George Mason to Washington Boulevard.

The Court: You are going to ask him about page 2577 } measurements and distances?

Mr. Harrigan: No, I am not going to talk about distances so much as the general terrain in the area and what it is.

The Court: I will let him testify to that if he has familiarized himself with it. It establishes the basis for knowing what he testified to.

By Mr. Harrigan:

Q. All right. Have you been in that area?

A. Yes, I have.

Q. Are you familiar with it?

A. Yes, sir.

Q. Have you been all over that area of Harrison and Fairfax?

A. Yes, I have.

Robert A. Hunt

Q. Are you familiar with the area from the end of Fairfax Drive up to George Mason Drive, I think it is?

A. Yes, sir.

Q. Stand to one side.

This is Glebe Road marked on there already (indicating). What is that (indicating)?

A. South Harrison Street.

Q. What is this (indicating)?

page 2578 } Mr. Hassan: If Your Honor please, I am going to object. If he is familiar with it, why does Mr. Harrigan keep pointing these things out?

Mr. Harrigan: He is pointing, but he is not telling us whether he is on North Harrison.

Mr. Hassan: If he is the one that is familiar with it, let him testify.

The Court: Mr. Hunt, can you identify the point that you are starting from?

The Witness: I will have to find it on this map first.

This is the area right here (Indicating.)

By Mr. Harrigan:

Q. What is this?

A. That is where—

Q. What street is it?

A. It is Fairfax Drive (indicating).

Q. Does it run through or is it a dead end?

A. It dead ends and makes a sharp left-hand turn.

Q. Now, describe the area from there on over.

A. Right at the dead end, there is a footbridge about thirty feet long crossing, I believe it is Lubber Run Creek. There is a muddy path coming up through. It comes
page 2579 } straight on through for about a block to North Buchanan Street and 9th Street at the intersection.

Q. What is on the side of that?

A. Bushes, that's grown up quite well. I crossed the railroad tracks and came out to 9th Street and Buchanan. 9th Street dead ends one block down.

Q. Go ahead.

A. And tell where I went?

Q. Yes.

A. I went to the end of 9th Street at the dead end to a red brick house. I made a right turn and went up a path which

Robert A. Hunt

comes into George Mason Drive and continued up George Mason Drive for about one block and it dead ends and there's a small path cutting through to another section of George Mason Drive. George Mason Drive comes up this way to Washington Boulevard.

Q. Was this the area right in here (indicating) where this dead ends and then cuts through?

A. Trees, bushes, a small path.

Q. All right.

A. And I continued up Washington Boulevard to Jefferson Street.

Q. Now, did there come a time when
page 2580 } you walked from 2522 Lee Highway?

A. Yes, sir.

Q. To Jefferson Street?

A. Yes, sir.

Q. Which way did you go?

A. Up Fairfax Drive to the end through the path, down 9th Street to the path there again and across to George Mason Drive, went the one block and crossed to the other path and continued on George Mason Drive to Washington Boulevard, up Washington Boulevard to Jefferson Street.

Q. Where did you start from?

A. 2522 Lee Highway.

Q. How long did it take you?

A. Forty minutes.

Q. All right. Is that a slow walk, a medium walk, what kind of a walk?

A. Just a normal walk.

Q. Do you do a lot of walking?

A. No, sir.

Q. How much do you weigh?

A. 247 pounds.

Q. How much did you weigh after you finished the walk?

Mr. Hassan: Immaterial and irrelevant.

page 2581 } By Mr. Harrigan:

Q. All right. Now, when you went through there, was there any foliage on any of this shrubbery, any leaves?

A. No, sir, not at that time.

Q. When did you go through there?

Robert A. Hunt

A. December 13th.

Q. Which was exactly—

A. Yesterday.

Q. When were you supposed to go through there?

A. I was told to go through it about a month ago, but wait until after a rain before I did go through it.

Q. Did you see any water when you went through yesterday?

A. Yes, sir.

Mr. Hassan: I am going to object to yesterday. What was there yesterday, wasn't there on the 25th of August?

The Court: I think it would be almost impossible to duplicate the conditions of the 25th of August in December.

Mr. Harrigan: I think it would be, too.

The Court: So it is a fruitless line to pursue, I think.

Mr. Harrigan: All right.

Mr. Taylor, have you got FF 1, 2, and 3?
page 2582 } The Clerk: Right, FF1 through FF6.

By Mr. Harrigan:

Q. I show you these photos FF1 through FF6. Who took these?

A. I took them, all except one.

Q. Which one didn't you take?

A. My own picture.

Q. All right. Who took that?

A. Mr. Paul Sale.

Q. Now, were you there when all of them were taken?

A. Yes, sir.

Q. Are they a true and accurate representation of how that appears?

A. On that day, yes, sir.

Q. Where are those pictures taken?

A. To the side and rear of the Seven Eleven Store, Dominion Hill Shopping Center.

Q. That is the other side of the building from the Good Will?

A. Yes, sir.

Q. I'd like to offer these in evidence.

Mr. Hassan: What day were they taken? His answer was on that day, but we haven't the day.

page 2583 } Mr. Harrigan: What day were they taken?

Robert A. Hunt

The Witness: December 7.

Mr. Hassan: Objection, Your Honor.

The Court: What is the basis?

Mr. Hassan: It doesn't represent what they looked like on August 26th.

Mr. Harrigan: I think the building is pretty much the same.

Mr. Hassan: There's more than a building. You have more than a building in there. We have got a lot talk about trees and trash cans. We don't know whether this man was there on the 25th or not.

Mr. Harrigan: He was there on the 26th.

Mr. Hassan: Not the 25th.

Mr. Harrigan: I think the test is a true and accurate representation about what it purports to show and what it purports to show is that corner of the building and the walls, which are the same.

The Court: I think the objection goes to their weight, rather than the admissibility of it. The jury would simply have to make allowances for the difference in season.

Mr. Hassan: We had witnesses who were there who could tell what the representation was because on the page 2584 } 26th at 7:00 o'clock in the morning, Lieutenant Fuchsman climbed that wall.

The Court: I think we already have testimony from the Commonwealth about it and some photographs, but for whatever weight the jury wishes to attach to these, I see no error in admitting them.

Mr. Harrigan: Fuchsman also said the wall was only three feet from the edge of the store too, so that is how accurate he was.

The Court: They will be admitted. FF1 through 6.

(The photographs previously identified as Defendant's Exhibits FF1, FF2, FF3, FF4, FF5, and FF6 were received in evidence.)

By Mr. Harrigan:

Q. These are all pictures of the rear of the building at the Seven Eleven side where the wall is, right?

A. Yes, sir.

Q. Any questions? I notice the jury was going over them. Is there any confusion about any of these?

Robert A. Hunt

Mr. Hassan: I have never heard of this type of procedure where the defense counsel questions witnesses, the Court and the jury.

page 2585 } Mr. Harrigan: I just want to make sure.

Mr. Hassan: I am going to object to the procedures. They are so brand new the legislature hasn't acted on them.

By Mr. Harrigan:

Q. Now, were you up on that shopping center roof?

A. Yes, sir, I was.

Q. When was the first time you were up there?

A. September 12th.

Q. Now, did you have occasion to come up to the front of the roof where the roof and the front part comes up?

A. Yes, sir.

Q. Could you look over that and see the parking lot?

A. Yes, sir.

Q. Where did that roof hit you?

A. Just about the waist.

Q. Now, showing you Exhibit 18J, if you were behind that sign, air conditioning, Econo-Wash sign, where would the first layer of that sign hit you?

A. Just about mid-waist, on the chest.

Q. Was there any water up there when you were up there?

A. Very little.

Q. This is the picture he is referring to.

That is all.

page 2586 } The Court: Mr. Hassan.

CROSS-EXAMINATION

By Mr. Hassan:

Q. Do you regularly investigate criminal matters, Mr. Hunt?

A. At times, yes, sir.

Q. How many times?

A. I have had four other cases here in Arlington.

Q. How many have you testified in?

A. Two.

Q. Criminal matters?

A. Yes, sir.

Q. Have you testified in the Circuit Court?

Robert A. Hunt

A. Yes, sir.

Q. Have you qualified as an expert?

Mr. Harrigan: I didn't qualify him as an expert.

Mr. Hassan: I say you did.

Mr. Harrigan: He didn't qualify any of his detectives as experts.

The Court: The objection is overruled. I think he can pursue the question.

By Mr. Hassan:

page 2587 } Q. You never did qualify as an expert?

A. No, sir, not actually.

Q. Now, you stated, or the question to you was asked, you talked to Alice and John Patler. My question is, when did you talk to John Patler?

A. He was in jail.

Q. In when?

A. I believe the first time was, I believe the first week in September, just briefly.

Q. How many other times?

A. Three other times.

Q. What were those conversations about?

A. Mainly, I just listened. I was with the attorneys, Mr. Harrigan and Mr. Morris.

Q. Then, they asked the questions and you just listened?

A. Yes.

Q. Now, who arrived at the time span at each of the stops on the reconstruction of the trip of the morning of 25th of August?

A. Who arrived at it?

Q. At the time span, yes, each one of these stops?

A. Do you mean who made the run?

Q. Who determined how much time will elapse
page 2588 } at each stop?

A. Mr. William Sheehy used a watch.

Q. How did you know how much time to spend there?

A. We didn't know at the time how much time we were going to spend there.

Q. Did you and Mr. Sheehy come to the conclusion as to how much time you would spend there?

A. No, sir, we did not.

Q. How did you know how much time to spend there?

A. Mrs. Patler.

Robert A. Hunt

Q. Mrs. Patler told you?

A. Yes, sir.

Q. Did she tell you when to stop the watch?

A. No, sir. We didn't stop the watch.

Q. Didn't you say Mr. Sheehy had a stop watch?

A. No, sir, I did not.

Q. What did Mr. Sheehy have?

A. He had a watch.

Q. Who kept track of the time, you or Mr. Sheehy?

A. Mr. Sheehy.

Q. So you really don't know what the time was, do you Mr. Hunt?

A. Yes, sir.

page 2589 } Q. How do you know?

A. I was informed of it.

Q. Hearsay. What Mr. Sheehy told you is all you know? Is that right?

A. Yes, sir.

Q. You didn't actually keep the time yourself?

A. No, sir, I didn't.

Q. No, sir, I didn't think so.

Now, when you took this walk here yesterday—

A. (Interposing) Yes, sir.

Q. (Continuing) and you got over the thirty-foot bridge and underneath the railroad tracks, did you turn left to Wilson Boulevard and walk up to the Seven Corners Shopping Center?

A. No, sir.

Q. You don't know how much time that takes?

A. No, sir.

Q. When you left Lee Highway, did you go straight through to Wilson Boulevard and take a bus up to the shopping center?

A. No, sir.

Q. You don't know how much time that takes, do you?

A. To go to the shopping center?

Q. Yes.

page 2590 } A. Yes, sir.

Q. Either of those two walks?

A. I didn't walk from Lee Highway to the shopping center. I did take a bus.

Q. From where?

A. 2522 Lee Highway.

Q. Then, to the shopping center?

Robert A. Hunt

A. Yes, sir.

Q. How much time did that take?

A. Twenty-eight minutes.

Q. Then, if you had taken a bus from Wilson Boulevard, leaving at the same time, you say from your trip, that this gentlemen left, would you have been up there at Seven Corners by 12:00 o'clock?

A. I have no idea.

Q. You didn't run that test, did you?

A. No, sir.

Q. Do you know the bus schedule on Wilson Boulevard?

A. It runs, I believe, every fifteen minutes.

Q. Is there one that arrives at the shopping center at three minutes of twelve?

A. I don't recall right now.

Q. Pretty close to that though, isn't it.

page 2591 } A. I don't know.

Mr. Harrigan: How would he know? He says he doesn't recall.

Mr. Hassan: He knows they run every fifteen minutes.

The Court: Do you know when the buses arrive?

The Witness: No, sir.

By Mr. Hassan:

Q. Why were you standing on that wall instead of somebody Mr. Patler's size when that picture was taken?

A. Just to show the height of the roof.

Q. Why was it that so much attention was paid to the Seven Eleven?

A. That is where I was told to have the picture taken.

Q. Do you know of any information that indicates anybody came down from the Seven Eleven end of that building?

A. No, sir.

Q. I don't know, either.

Did you climb down on the Good Will end?

A. No, sir, I didn't.

Q. Did you have somebody Mr. Patler's size climb down the Good Will end?

A. No, sir.

page 2592 } Q. No further questions.

The Court: Any redirect?

Robert A. Hunt

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Why didn't you come down from the Good Will end there? How easy is that?

A. I wouldn't want to try it.

Q. Mr. Hassan made a big point. Were you with Mr. Sheehy when all this went on?

A. Yes, sir, I was.

Q. Did you record exactly what was going on?

A. Yes, sir.

Mr. Hassan: If Your Honor please, he said he did not record it. Mr. Sheehy recorded it.

The Court: He said he did not keep time, but he did not say whether or not he recorded it.

Mr. Hassan: Well, whatever he recorded was pure hearsay because he didn't keep the time.

By Mr. Harrigan:

Q. Now, you said who decided how long you would stay in the store, did you just run in and do what was supposed to be done and come out?

A. Yes, sir.

page 2593 } Mr. Hassan: Objection, Your Honor. My question was who told him what was supposed to be done.

The Court: The objection is overruled.

Mr. Harrigan: So to the best of your knowledge, was that the exact duplication?

Mr. Hassan: Objection, Your Honor. He wasn't there on the 25th. He wouldn't know what an exact duplication was.

The Court: Objection sustained.

Mr. Harrigan: All right. I think it's clear enough. That's all.

The Court: All right, sir. You are excused. Thank you.

(Witness excused.)

Mr. Harrigan: Now, I would like to call Mr. Sheehy. He is under a prosecution subpoena and we didn't think it would be necessary, but we will call him.

The Court: Is he here?

Robert A. Hunt

Mr. Harrigan: I don't know. He is under subpoena, Your Honor, for the Commonwealth.

Mr. Hassan: He was excused, subject to my call and I didn't call him.

Mr. Harrigan: He was never excused as far as I was concerned.

page 2594 } Mr. Hassan: That is your problem.

Mr. Morris: Well, then, Your Honor, I would like to have a five-minute recess to call him, if he is available. I think it is a waste of time because he is going to say the same thing.

The Court: Mr. Hassan, are you willing to stipulate that he is going to testify to the same thing?

Mr. Hassan: If he reads the same paper, yes, but if he reads a different paper, I won't stipulate.

If he can have him here in five minutes, I would like to have him get his case over with and proceed in an orderly fashion.

The Court: Court will recess subject to call.

(Whereupon, a short recess was taken.)

Mr. Harrigan: Your Honor, there's one area we forgot to ask Mr. Hunt. It is very brief and it just connects up the threats that we alleged Mr. Vidnjevich made. It just concerns that area, that is all. We had it written down but we went right over it.

The Court: Is he still here.

Mr. Harrigan: He is still here.

The Court: I will let you put him back on. He will have to be cross-examined on it, of course.

page 2595 } Whereupon, ROBERT A. HUNT resumed the stand, having been previously sworn, was further examined and testified as follows:

FURTHER REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Mr. Hunt, a couple of more questions. You just testified, is that right, Mr. Hunt?

A. Yes, sir.

Q. Now, there is one area that we didn't go into. Did there come a time when you received any telephone calls from anyone?

Robert A. Hunt

A. Yes, sir.

Q. Particularly, a Mr. Vidnjevich, have you heard that name?

A. Yes, I have.

Q. Now, did you receive some calls from him?

A. Yes, sir.

Q. How many calls, do you recall?

A. Two that were from him.

Q. Two calls from him?

A. Yes, sir.

Q. Would you tell us when those calls were
page 2596 } made to you, where, and what happened?

A. The first one came October 4, about 10:30
in the evening.

Q. Where were you when the call came in?

A. In my office in the Southern Building.

Q. What was said?

A. He asked for Mr. Sheehy. I said Mr. Sheehy is no longer at this number and he said, "Who is this?" and I said, "Who is this?" and he said, "Who is this?" and I said, "Mr. Hunt, can I help you?" and he said, "I want you, too. You will never live to see Patler come to trial."

Q. What did you say?

A. I said, "Who is this?" and he hung up.

Q. Now, what did you do after that?

A. I called Mr. Karl Allen in Alexandria and told him of the threat and asked him if he might know who would be making threats. He told me that he had heard a rumor from Sheehy that Mr. Vidnjevich had been making threats out there and was supposed to come into town.

Mr. Hassan: If Your Honor please, this is the rankest of hearsay.

The Court: It is thus far. Unless it is connected up some way, it is going to have to be stricken.
page 2597 } Mr. Hassan: Hearsay, Mr. Allen's rumor from Chicago gets pretty rank. Even the stock-yards don't smell that strong.

Mr. Harrigan: I'm just offering it for information for why Mr. Hunt acted on his next move. Then we will go ahead.

The Court: All right.

Robert A. Hunt

By Mr. Harrigan:

Q. After you received information from Mr. Allen, what did you do?

A. I called the Nazi Headquarters.

Q. Who answered the phone?

A. A duty officer.

Q. Did you ask for anybody?

A. I asked for Mr. Vidnjevich.

Q. Did Mr. Vidnjevich come to the phone?

A. Yes, sir. There was a short pause. The duty officer asked who was calling. I told him Mr. Hunt. Then there was a short pause and then he said, "This is Vidnjevich."

Q. Did you recognize the voice?

A. Yes, sir.

Q. How long was this after you received the call?

A. About twenty minutes.

Q. What did you ask him?

page 2598 } A. I asked him if he just called me.

Q. What did he say?

A. "What is it to you?"

Q. Tell us what happened. What went back and forth?

A. May I refer to my notes on that?

Q. Go ahead.

A. I asked him, I said, "I just want to know what you are up to." He said, "If you want to know so bad, just bring your little ass up here and I will show you."

Q. Go ahead, what else?

A. He didn't admit to the call, but he wouldn't deny it.

Q. Now, did the voice sound the same to you?

A. It sounded identical to me.

Q. Any other conversation during that phone call?

A. Yes, sir, there was.

Q. From Mr. Vidnjevich?

A. Yes, sir.

Q. Tell the jury what that was.

A. I said, "I am not coming up there. I will meet you out in the open tomorrow afternoon if you want to talk." I have got a very vulgar four-letter word here that he used.

Q. Just tell us what he said.

page 2599 } A. He said, "Fuck you. Fuck your mother."
I said, "What are you shook up about?" and he said, "Sorry I got vulgar," and then he let out this laugh and said, "Why don't you go to hell?"

Q. Then what?

Robert A. Hunt

A. He hung up.

Q. Did you get any other calls?

A. Yes, sir.

Q. When was the next call?

A. October 7th.

Q. Who was that one from?

A. The same party.

Q. Mr. Vidnjevich?

A. Yes, sir.

Q. Tell us what happened on that call.

A. I answered the phone in the usual way. I stated, "Investigations, Incorporated," and he said, "Hunt?" and I said, "Speaking," he said, "Not for long, you're not. You don't have much longer to live." I said, "Is this Vidnjevich?" and he laughed and hung up.

Q. All right. That's all.

RECROSS-EXAMINATION

By Mr. Hassan:

Q. How do you know it was Vidnjevich?

page 2600 } A. The voice sounded identically the same.

Q. But you haven't identified him the first time, have you, Mr. Hunt?

A. In my mind, there's no doubt.

Q. In your mind, there's no doubt. You get a rumor from Mr. Allen that came out of Chicago and you called to someone who you do not know was Mr. Vidnjevich and you say that is him.

A. He identified himself as Vidnjevich.

Q. How do you know it was Vidnjevich?

A. I presume he wasn't lying about it.

Q. Did you ever meet him face to face?

A. No, sir.

Q. You never did, in person, identify his voice, did you?

A. Not in person, no.

Q. No further questions.

FURTHER REDIRECT EXAMINATION

By Mr. Harrigan:

Q. There's no question about your talking to Nazi Headquarters, was there?

A. No, sir.

William L. Sheehy

page 2601 } Q. Did you ever talk to them face to face?
A. To who face to face?
Q. Did you go up there and talk to them?
A. No, sir.
Q. You don't know who you talked to up there, do you?
A. No, sir.
Q. That's all.

The Court: All right, sir. You are excused.

(Witness excused.)

Mr. Harrigan: I call Bill Sheehy.

Whereupon, WILLIAM L. SHEEHY, was called as a witness on behalf of the defendant and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please.

A. William L. Sheehy.

Q. Mr. Sheehy, what is your experience as an investigator?

A. I have been in business for myself here in Arlington for four years. Prior to that I was an independent investigator for seven years.

Q. For a total of eleven years?

page 2602 } A. Yes.

Q. Now, calling your attention to on or about September 1st, did you have occasion to make a run with Mr. Hunt and an Alice Patler?

A. Yes, I did.

Q. Who timed this run?

A. I did.

Q. Did you write down the times?

A. Yes, I did.

Q. Do you have any notes reflecting when those times were?

A. Yes, I do.

Q. Have you got them with you?

William L. Sheehy

Mr. Hassan: Are they the same notes?

Mr. Harrigan: The same notes.

Mr. Hassan: Then I stipulate the times are the same.

By Mr. Harrigan:

Q. Are those times accurate?

A. Yes, I would say so. I timed them.

Q. And you can tell time?

A. I hope so.

Q. Now, you were subpoenaed by the Commonwealth, originally, is that right?

page 2603 } A. That's correct.

Q. That's all.

The Court: Mr. Hassan?

CROSS-EXAMINATION

By Mr. Hassan:

Q. A little while ago, defense counsel didn't ask you the question, but they made the statement. They said you testified several times in the Circuit Court?

A. That's right.

Q. How many times in criminal matters?

A. Three or four times.

Q. What is the nature of the criminal matters?

A. Well, various—rape cases, murder cases.

Q. In Arlington County?

A. No, Fairfax.

Q. In Fairfax?

A. Fairfax and Alexandria.

Q. And that is four times?

A. Three or four times over a period of four years.

Q. Three or four times?

A. Right.

Q. Over the past four years?

A. Right.

page 2604 } Q. What was the nature of your testimony?
What classification was it in?

A. I don't have those files. I have no way of knowing now what exactly you are asking me. I was called as an expert witness as an investigator in those cases.

Q. As an expert witness in those cases. Who qualified you? What lawyer.

William L. Sheehy

Mr. Harrigan: Your Honor—go ahead and name the lawyer you worked for.

Mr. Hassan: No, I don't want the lawyer he worked for. I want to know the one he qualified as an expert for.

Mr. Harrigan: An expert on what?

Mr. Hassan: A criminal investigator. What he just said.

The Court: I think that is irrelevant. He hasn't qualified here.

Mr. Hassan: No, sir, I guess he hasn't. No further questions.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. If you are investigating a crime of a coat under a bush, would you look in all the pockets?

That is enough.

page 2605 } Mr. Hassan: If you want to talk about experts, I don't think the defense counsel was any smarter about those reversible coats and pockets than anyone else.

The Court: Save it all for final argument.

Do you have any further questions of this witness?

By Mr. Harrigan:

Q. On civil matters, how many times have you testified?

A. Well, in a period of a year, I have been called formally half a dozen times in various cases.

Q. Other than Courts and civil cases, how many civil cases have you testified in?

Mr. Hassan: Objection.

Mr. Harrigan: The same type of investigation.

The Court: It is all irrelevant. He was called here as a witness, a fact witness, not as an expert witness.

All right, sir, thank you, you are excused.

Mr. Harrigan: Thank you.

(Witness excused.)

Mr. Harrigan: We would rest our case at this time, Your Honor, and we would like to offer into evidence Commonwealth's Exhibits of seventeen cans of dirt, all the FBI testi-

mony and connecting evidence that went along with the testimony. We would like to offer all of it in evidence. page 2606 } It never has been offered.

Mr. Hassan: It was offered and refused.

The Court: Now, I don't think you offered the cans of dirt.

Mr. Harrigan: It never was offered.

Mr. Hassan: Well, that is Commonwealth's Exhibit 22 through 40.

The Court: It seems to me that what you want to establish there for the defendant is, I am sure, that no connection was shown between those things and the defendant.

Mr. Harrigan: I think that has been established.

The Court: It has been established by the testimony of the witnesses and I just hate to get the Clerk's files cluttered up with seventeen cans of dirt, which prove nothing. So, putting those things as exhibits does not establish your point. It was established by expert testimony. I hardly see that it helps your case or helps anyone to get those things in the Clerk's files.

Mr. Harrigan: Some of the things, the rocks off the roof and so forth and so on, I don't think the jury has been shown it. Now, there's been inference that there was tar on the shoes. If there was tar on the shoes and a man ran across the roof with those rocks there, it seems like they page 2607 } would have found at least one or part of one in the tar and I just want them to take a look through the rocks.

The Court: That may be addressed to them in final argument. In looking at the rocks, which—

Mr. Harrigan: But they came off the roof.

The Court: But were not found in the defendant's shoes. What does that prove? It proves the FBI found nothing in the defendant's shoes which connected the defendant with that roof. It's already been established by testimony. I don't think you need the cans of rocks to prove it.

Mr. Harrigan: All right.

Mr. Hassan: Unless there be some misunderstanding, that wasn't quite what the FBI found. They found that tar was tar and even if it was off that roof, they wouldn't be able to tell you.

The Court: Previous testimony related to the tar and dirt, that's true.

The defense has rested. Does the Commonwealth have further evidence?

Mr. Hassan: I do, Your Honor.

The Court: All right, will you call your rebuttal witness?

Nadene Forsyth

Mr. Hassan: Mrs. Forsyth.

page 2608 } Whereupon, NADENE FORSYTH, was
called as a witness on behalf of the Common-
wealth, and having been previously duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Nadene Forsyth, 5938 Wilson Boulevard, Arlington.

Q. Do you know the defendant, John Patler?

A. Yes.

Q. Have you met him in the vicinity of Dominion Hills?

A. Yes.

Q. Now, directing your attention to on or about the 24th day of August, 1967, did there come a time when you had occasion to see him in the vicinity of Dominion Hills?

A. Yes.

Q. Where was that?

A. It was just at the exit from the bank there, across from the Fidelity National Bank, across from the Seven Eleven.

Q. That is just west of the shopping center towards Seven Corners?

A. Yes, at the driveway coming out onto Wil-
page 2609 } son Boulevard.

Q. On the Seven Corners end of the building?

A. Yes.

Q. Now, what were you doing there?

A. I had deposited—I had made a deposit at the bank that day and was driving out the driveway.

Q. Did you stop and talk to Mr. Patler?

A. Yes.

Q. Did he say where he was coming from?

A. Yes.

Q. Where was he coming from?

A. Yes.

Q. Where was he coming from?

A. From Seven Corners.

Q. Now, did he tell you what he had been doing at Seven Corners?

A. Shopping.

Q. Did he say what he was shopping for?

Nadene Forsyth

A. No.

Q. Did he mention Good Will?

A. I don't recall that he did.

Q. Did he mention a crib?

A. No.

Q. Did you offer to give him a ride?

A. Yes.

Q. Did he accept the ride?

page 2610 } A. No, he said he still had some business to attend to.

Q. Who was with you at the time?

A. My daughter, Jeannine.

Q. What time of the day was it?

A. That, I am not sure. It was in the afternoon, I don't know what time.

Q. Early or late afternoon?

A. I am not sure of that either. It was a bright afternoon.

Q. A bright afternoon?

A. Yes.

Q. It was not raining?

A. No.

Q. Well, could it have been a Wednesday afternoon?

A. I don't know what date Wednesday was.

Q. The 23rd.

A. The 23rd? It could have been.

Q. It could have been Wednesday afternoon? It was late. Do you have your bankbook with you?

A. Yes, my bankbook says the 24th.

Q. That would be starting the 24th after 2:00 o'clock on Wednesday up to 2:00 o'clock on Thursday would it not?

A. Yes.

page 2611 } Q. Now, does that help you?

A. No, it does not. I don't know if I got to the bank. You see this bank stays open until after 2:00 o'clock and it depends on the condition of my credit and I don't remember what it was. I get there before 2:00 o'clock sometimes, but sometimes I don't need to.

Q. So, it was either on the 23rd or the 24th?

A. Yes.

Q. It was not earlier in the week?

A. I am going by my bankbook, it says the 24th.

Q. I have no further questions.

John Harnett

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Did you recall it was a bright afternoon, though?

A. Yes, I do.

Q. Now, if it had rained all day on the 24th, then it wouldn't be the 24th, would it?

A. It wasn't raining.

Q. How long have you known John Patler?

A. Four or five years, I guess.

Q. Under what circumstances did you first meet Mr. Patler?

A. The first time—

page 2612 } The Court: You're going outside the scope of direct examination here.

Mr. Harrigan: Well, Your Honor, I don't think I am confined to the scope of direct examination. I'm just showing the relationship of the parties and I think that's always proper inquiry.

The Court: All right.

The Witness: The first time that we had any much direct communication was when my car had stalled on the hill. However, we did meet briefly a year or a while before that in a rain storm in the doorway, I believe, and I had been caught in a deluge and it was raining very, very hard and I called my husband to come and pick me up because I was going to walk home, but it was too hard and this young man was standing in the doorway, too, and I said, "My husband will be here soon enough. We'll take you home."

Q. And that young man was Mr. Patler?

A. Yes.

Q. Did there come a time when Mr. Patler ever pushed your car to help you?

A. Yes, we live on a hill by the church there, on Wilson Boulevard and the car wouldn't start and I rolled it down the hill, hoping it would get started, but it came
page 2613 } to a painful stop near the railroad tracks at the bottom of the hill and I needed it to start and no one helped me, but John came along and pushed my car around the corner to Lexington, around the corner on 8th and around the corner on Kensington to get me going on a straightaway,

John Harnett

to get the car up to thirty miles an hour to get it started. I was very grateful for that.

Q. Did you ever offer to cook him anything?

A. That's right, I did. I said, "I will cook you a pie." I forgot about that.

Q. You were always on friendly terms—

A. Well, in the four years or so, or five years, I had seen him go past the house many times and sometimes, I'd be out watering the flowers or something and I'd say hello, and once in a great while, I'd be coming out of my driveway as he would be walking and I'd offer to give him a ride. Occasionally, he would accept the ride, but he seemed to like to walk a lot and so often he would decline and just walk, but sometimes he would take a ride just as far as Hecht's, never any further. I didn't know he was a Nazi at that time. I guess he was on his way to his headquarters. I didn't know.

Q. Now, did you make any deposits? Obviously, you did, but do you know when your deposit was prior to page 2614 } the 24th?

A. I have my book here.

Q. All right.

A. I have my book and not my glasses. The 11th and the 24th and then September 6th.

Q. Now, do you recall what kind of a day it was on the 11th?

A. No, no, I don't. I just recall that he had a light shirt and it was a warm day and the shirt was open at the neck.

Q. Thank you very much.

The Court: Any redirect, Mr. Hassan?

Mr. Hassan: No redirect.

The Court: All right. Mrs. Forsyth, thank you.

(Witness excused.)

Mr. Hassan: Mr. Arnette.

Whereupon, JOHN HARNETT, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and address, sir?

John Harnett

A. John Harnett, 409 4th Street, Northwest, Washington, D. C.

page 2615 } Q. Directing your attention to on or about the 27th day of June, 1967, did there come a time when you were riding with George Lincoln Rockwell—

A. (Interposing) Yes, sir.

Q. (Continuing) when something unusual happened at the barracks on Wilson Boulevard?

A. Yes, sir.

Q. What happened?

A. Well, the car which Commander Rockwell was driving was turning left off Wilson Boulevard onto the driveway leading up to the barracks when there was a mailbox, when we had gotten partially in the middle of the driveway, and there was a mailbox sitting in the middle of the driveway which sat there as a roadblock and I got out of the car and went down to pick up the mailbox and as I was sort of getting up, starting to get up, I heard this crack and saw the Commander open the car door, you know, and start running down Wilson Boulevard, so I put the mailbox on the pillar and went after him a little ways and he told me to take the car and go up to the barracks and take the others.

Q. Did he say anything else?

A. No, not at the time. Afterward, when he came back up to the barracks—

page 2616 } Mr. Harrigan: Objection, Your Honor. It is all hearsay.

Mr. Hassan: By the *res gestae*—

Mr. Harrigan: What *res gestae*?

Mr. Hassan: Of the shooting at him.

Mr. Harrigan: *Res gestae*?

Mr. Hassan: Isn't the attempted assassination what you have been talking about in this trial?

Mr. Harrigan: I haven't been talking about it, you have.

Mr. Hassan: He—

Mr. Harrigan: He raised it initially.

The Court: What is the question now pending?

Mr. Hassan: The question now pending is what George Lincoln Rockwell said to him about the man he chased after the shot was fired at him on the 27th day of June, 1967.

Mr. Harrigan: This is a collateral matter, also, and we are going to try thirty-five different cases at the same time. This was mentioned but we have got to draw a line some-

John Harnett

where and we object and we want to draw it right here and now, that that is pure hearsay what George Lincoln Rockwell said on June 27th.

page 2617 } Mr. Hassan: The purest of hearsay was the witness, Frank Smith, who spent half a day talking about this.

Mr. Harrigan: All you have to do is object, but we do object, I don't think it is admissible. It is a collateral matter. I think the fact of the prior attempt can be mentioned and has been mentioned and now we are going to object.

Can we approach the bench, Your Honor, unless you are going to rule.

The Court: All right.

* * * * *

Conf.

12/14/67

page 3 }

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Mr. Harrigan: I would object to the pure hearsay. I think the fact of a prior attempt may be shown, but when you start getting into the specifics and what Rockwell said, it is nothing more than hearsay. The only thing Commander Rockwell said that would be admissible would be dying declarations or something like that which may be part of the *res gestae* in this offense, certainly of a prior attempt and not *res gestae* of this.

The Court: Is it necessary that for hearsay declarations to come in under the *res gestae* exception, that the *res gestae* relates to the specific crime under investigation or does it suffice that it can be sufficiently exciting to give the declared insufficient time to make up a story as to reflect, so that his absence of an oath in Court is supplied by the fact that his exclamation was spontaneous?

Mr. Morris: He didn't make it. The witness said he was *chasing* those guys and rode back up to the hill.

Mr. Hassan: That isn't what the record said he said. The witness, Frank Smith, said when he was asked Conf. the question, "Did Rockwell tell you that he said the 12/14/67 man looked like The Holy Father?" his response in page 4 } front of the jury was, "Ridiculous."

John Harnett

Mr. Harrigan: You asked that question.

Mr. Hassan: You brought up the subject matter. Now, this witness here is the witness to whom Rockwell said it looked like The Holy Father. He didn't even know who The Holy Father was. I don't think he even knew who Mr. Morris was when he saw Mr. Morris.

Mr. Morris: That's right.

The Court: Did Rockwell have a chance to see him before he said it or did he burst out with this spontaneously?

Mr. Hassan: I said Rockwell followed him down the hill and when he came back down, Rockwell said to him he looked like The Holy Father.

The Court: I think the objection there should be sustained.

Mr. Hassan: All right. Since we are here, my next witness testified that he was driving along at the same time when a man ran out of the bushes and ran in front of him, and that man was John Patler.

Mr. Harrigan: We would object to that, too.

The Court: Would you run through that again for me, please.

Mr. Hassan: I have the next witness, Mr. Hancock, who was driving along in the vicinity at the 12/14/67 time.

page 5 } Mr. Harrigan: Was he a Nazi or with Rockwell?

Mr. Hassan: No, sir, he's been in the real estate business. He was there at the Laundromat or something, there at the shopping center and he happened to be there and he was one of the ones that called the police department when the shooting occurred. On the day this occurred, he was driving by the house and a man ran out of the bushes right in front of the automobile.

The Court: June 27th?

Mr. Hassan: June 27th, and that man was John Patler. That is his testimony.

The Court: That would seem to me to be in a different category. It seems to me he can testify to that.

Mr. Harrigan: I would object to that, Your Honor, I don't think we are trying John Patler on anything that occurred on June 27th. Now, this man has never said he knew what happened.

Mr. Hassan: You haven't given him a chance to say anything about June 27th.

Mr. Morris: We are not talking about Harnett.

John Harnett

Mr. Harrigan: I am saying you haven't even laid a foundation to show there was an assassination attempt.
Conf. There's been a lot of smoke about it. Frank Smith 12/14/67 said something to the Effect there was a cherry page 6 } bomb thrown.

The Court: Koehl testified about it. He saw the bullet mark on the top of the car.

Mr. Hassan: He testified to the crease in the car and they came to the conclusion of what caliber it was.

Mr. Harrigan: I don't think Patler is on trial for the 27th.

The Court: The jury will have to be instructed, but it does seem to me it goes to the evidence of a relationship between the parties. If the jury believes there was a prior attempt on Rockwell's life, they are entitled to consider this. Now, it is true it is directly controverted from the man who testified, so there would be a direct conflict in the evidence, but if this man has testimony of this kind it would be admissible to show the attitude Patler had toward the deceased.

Mr. Harrigan: There was no evidence there was an attempt on his life before. There hasn't been a scrap of it.

Mr. Hassan: There certainly has. They testified there was a crease in the car caused by a man crouched down shooting.

Mr. Harrigan: Who said that?

Conf. **Mr. Hassan:** One of the Nazis there.

12/14/67 **Mr. Harrigan:** Who?

page 7 } **Mr. Hassan:** I don't know who, but that was what he said under oath.

Mrs. Lane: I understood there was a police investigation at that time, calling it to the attention—

Mr. Hassan: No, there was a report to the police, not an investigation.

The Court: I will let you go on with the next witness in due course and we will see how it develops, but the objection is sustained as to the hearsay declaration by Rockwell.

Mr. Harrigan: All right, I will except to the ruling of the Court on the next witness for the grounds previously stated.

* * * * *

By Mr. Hassan:

Q. What occurred that day?

A. Do you want me to start over again?

John Harnett

Q. No, just tell us what happened. Don't tell us anything Rockwell said. Just tell us what happened.

A. Commander Rockwell was shot at, an attempt was placed on his life and the bullet left a dent in the left-hand front, left-hand side front of the car under which the car roof, under which Rockwell had been slain.

Q. Did you see anyone?

A. No, I didn't.

Q. As you said a moment ago, after you got
page 2618 } out and the shot was fired and Commander
Rockwell started running down the hill, did you
see anybody running?

A. No, I didn't. I apparently assumed—well, I assumed.

Q. Never mind the assumption. Please answer the question.

A. Well, I didn't see anyone.

Q. What did you do?

A. Well, Commander Rockwell turned around and told me to go to—

The Court: Don't tell—

Mr. Hassan: Unless he said go to the hill, Your Honor.

The Witness: Go back and get the others.

Mr. Hassan: Did you go get them?

The Witness: Yes, I got into the car and went up the hill.

Mr. Hassan: Thank you.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Now, when you went back up, was Matt Koehl there?

A. Yes, sir.

Q. Did he come down with you?

page 2619 } A. Yes, Major—Mr. Koehl and I went
through—

Q. Was it Major or Mister?

A. Well.

Q. What do you call him?

A. Well, sometimes both.

Q. I see, sometimes both?

A. Yes, as a matter of fact, but Mr. Koehl and I went around through the wooded areas of the property, down

John Harnett

around near Wilson Boulevard and didn't find any trace of anybody.

Q. Now, what do you do for a living?

A. Well, I am a college student.

Q. Where do you go to school?

A. Is this really relevant? Catholic University.

Q. How old are you?

A. Twenty-two.

Q. Do you have a car?

A. Yes.

Q. What kind?

A. A Volkswagen.

Q. Is something humorous?

A. I said a Volkswagen.

Q. Now, are you a member of the Nazi Party?

A. Sort of, in other words, I am a probationary member.

Q. A probationary member, what does that mean? You filled out an application, but there's a waiting line or something?

A. Well, a waiting period.

Q. So, do you have an official designation, such as a trooper?

A. No.

Q. Have you ever loaned your car to the Nazi Party?

A. Pardon?

Q. Have you ever loaned your car to the Nazi party?

A. No.

Q. How about Frank Draeger. Have you ever loaned it to him?

A. No.

Q. Has he ever driven it?

A. No.

Q. Did you ever give the Nazi Party or any member a car?

A. Well, yes, not give exactly.

Q. I see.

A. I was instrumental in their getting a motorcycle.

Q. Instrumental in getting would mean that you paid for it, is that right?

A. I also found it for them, yes, sir.

Q. Did you buy it for them?

A. Well, shall I say I loaned them the money, so I couldn't say—

Q. Did you buy it or did you loan them the money?

John Harnett

A. I loaned the money.

Q. Did you give them some sort of note back or did you take their word for it?

A. Well, for that I took their word.

Q. How much money?

A. \$100.

Q. All right. How long have you been in this probationary period?

A. I think about three or four months. I am not exactly sure.

Q. You're not?

A. Well, let's see. You see, there's some hang-up about my application because I didn't get my pictures in at the same time. I got my photographs in at the same time I got my application so I don't know whether they're dating it at the same time I filled out the application or at the time I handed in the photographs and it would make approximately two or three week's difference, so I can't make an exact—but it's approximately three to four months.

Q. Where do you live?

A. In Washington.

Q. When was the last time you were up at the barracks?

A. Let's see, the night before last, I think. Yes, the night before last.

Q. Who was up there?

A. Well, I saw Mr. Vidnjevic, Mister or Major, whichever you prefer, Koehl, Mr. Parsons, and some fellow, John Bosonose or something like that, I can't recall the exact name.

Q. Did you discuss the case with him up there?

A. Other than to say that I had been called in to testify, I didn't.

Q. Were you called in or did you volunteer?

A. Well, I was asked by Mr. Hassan and since I wasn't summoned, I assumed that I had the right to comply or not comply and I chose to comply with Mr. Hassan's request, so you might say, in a sense, I volunteered.

Q. Now, you said you gave a \$100?

A. Yes.

Q. Were there other times you gave additional sums of money?

page 2623 } A. Yes.

Q. When did you give the \$400?

I am waiting.

John Harnett

A. I know. I never—I don't recall. I am trying to think of the exact date. I think, let's see July 3, 1967.

Q. Now you prefaced that with "I never." What did that mean, you didn't give the \$400?

A. I prefaced it with "I never—I don't recall."

Mr. Harrigan: I misunderstood you. On July 3rd, you gave them \$400?

A. Yes.

Q. Do you remember the date you gave that?

A. Not the exact date. All I remember was that it was sometime in October and—

Q. Of this year or last year?

A. Yes, this year.

Q. Now, did you give them any other sums of money?

A. Yes.

Q. How much?

A. May I—if I am allowed to do so, ask why am I being asked these questions?

The Court: No, sir, you cannot ask that. You will just have to answer that and if they're improper, page 2624 } you may rely on this, that they will be terminated.

The Witness: May I refuse to answer these questions?

The Court: No, you may not.

The Witness: Yes, I have.

Mr. Harrigan: Okay, when and how much?

The Court: If you don't remember, you can say that though.

The Witness: Do I have to remember them all?

The Court: Just do the best you can.

The Witness: January 3, 1966, \$20.

By Mr. Harrigan:

Q. How much?

A. \$20. Sometime in February, I don't remember the exact date.

Q. This money, were you giving this to the Nazi Party or to some individual members?

A. I was giving it to the Nazi Party, yes.

Q. All right. Who collected it?

A. On July 3—I mean—yes, July 3, '67, I gave it to Com-

John Harnett

mander Rockwell. In February, let's see, \$100. In October I gave to Frank Draeger. In February, 1967, I gave to Commander Rockwell and January of '66, I gave to the defendant who was there.

page 2625 } Q. Now, the February one, how much was that?

A. I don't recall the exact amount.

Q. Was it over a \$100?

A. Yes, I do remember that much. I have the receipt at home.

Q. Was it over \$200?

A. I'm not sure, somewhere between \$100 and \$200.

Q. You gave that one to Mr. Rockwell?

A. Yes.

Q. Why were you giving them all this money?

A. Because I happen to believe in the same cause they do.

Q. I see. Now did you discuss this alleged shooting on June 27th with anybody?

A. I discussed it with the Arlington County Police who had come to investigate. I had my fingerprints taken at the police station, because I handled the mailbox which was used as a roadblock and other than that, except mentioning it to a few friends, I don't think I mentioned the fact that Commander Rockwell had been shot at and under the intended circumstances to a few people. I know I don't recall discussing it with anyone else.

Q. You say Frank Draeger has never driven page 2626 } any cars of yours?

A. No.

Q. Didn't he smash up a Volkswagen belonging to you?

A. Well, it didn't belong to me.

Q. Who did it belong to?

A. I presumed it belonged to the Nazi Party.

Q. Is that your Volkswagen you gave to them?

A. Which Volkswagen did he smash up.

Q. How many has he smashed up?

A. I don't know. I don't recall his having smashed up any Volkswagen and I certainly would recall it if he had smashed up my Volkswagen.

Q. Do you have a Volkswagen bus?

A. No.

Q. Did you buy them one?

A. I loaned them the money for it.

Q. Was that the \$400?

John Harnett

A. No.

Q. \$100?

A. No.

Q. This is more money?

A. Yes, but it wasn't given, it was loaned, contracted, signed, you know, the whole bit.

page 2627 } Q. How much was that one?

A. \$650.

Q. Do you work for a living?

A. No.

Q. Do you have any idea of the total amount of money that you have given up there?

A. Yes, it comes to somewhere around a \$1000.

Q. Well, \$650 and \$400 is \$1050.

A. That is a loan, I intended for that to be paid back.

Q. Have you been paid back anything on those loans?

A. Well, the \$650 that I loaned them, the terms of the contract, they haven't paid back yet, because they're still within the terms of the contract. They don't have to pay it back so fast or anything. The \$100 hasn't been paid back.

Q. The \$400?

A. Well, that was a donation or a contribution, whatever you want to call it.

Q. I thought you said that was another loan?

A. No, I said the \$650 was a loan, not the \$400.

Q. Where had you and Mr. Rockwell been on the 27th?

A. We had been out looking at used cars.

Q. You were going to buy him a car?

A. Well, I—yes, I was going to help buy a car,
page 2628 } yes.

Q. Anybody else with you?

A. No.

Q. What time in the day was it that he came back into the driveway?

A. Somewhere between 2:30 and 3:00 in the afternoon.

Q. You're not sure of that, now?

A. Fairly sure, yes.

Q. Did you have a watch on?

A. Yes, I have a watch on.

Q. Not now, then?

A. I don't recall if I had a watch on or not.

Q. But you are sure 2:30 or 3:00 o'clock?

A. Yes, because I seem to remember somebody else up at the barracks fairly soon after saying it was 3:15 or ten after

John Harnett

three, you know fairly soon after that attempt, so I assume it was somewhere between 2:30 and 3:00, quarter of three or three, possibly.

Q. Did you see this crease in the car?

A. Yes.

Q. Whose car was it?

A. It was the car of the Nazi Party.

Q. What kind was it?

A. It was a 1957 Buick.

page 2629 } Q. You didn't buy them that one, did you?

A. No.

Q. Now, who else knew what time you would be back there, other than you and Mr. Rockwell?

A. Nobody that I know of.

Q. Now, did the police find anybody's fingerprints, other than yours on the mailbox?

A. I don't know, I never heard.

Q. Yours were on there, weren't they?

A. Yes, I don't know that though. I assume that since I picked it up, they were on there. I don't know if that is a valid assumption or not.

Q. Do you belong to any other groups of similar nature?

A. No, unless you want to consider the Catholics as a group of similar nature.

Q. Did you say that you gave money? Did I hear you say that you gave money to the defendant?

A. Well, yes, he was a party officer at the time and he was the highest ranking man there. At least, I had the understanding that he was the highest ranking man present at the headquarters at that time.

Q. When you said that, what you really meant was that you gave it to the Nazi people?

page 2630 } A. That is what I said.

Q. Now, this shot that you say was fired—

A. (Interposing) Yes.

Q. (Continuing) the car had to come to a stop because of this mailbox?

A. Yes.

Q. Whoever it was that took this shot waited until you got out of the car, didn't they?

A. Yes.

Q. You got well ahead of the car by the mailbox?

A. No, the mailbox was just in front of the car.

Q. Were you bending over when the shot was fired?

John Harnett

A. Yes.

Q. Now, that wasn't a publicity stunt, was it?

A. Not that I know of.

Q. You said you didn't see anything?

A. No.

Q. Where were you August 25th?

A. I was at home.

Q. In Washington, D. C.?

A. Yes.

Q. Who lives there with you?

A. My mother, but she wasn't at home at the
page 2631 } time.

Q. So you were there by yourself?

A. Well, no, she wasn't at home, at least, part of the day. She wasn't home in the early part of the day when I was at home by myself. She was home later on in the afternoon.

Q. What time did your mother get home?

A. Well, she got home, somewhere, I think around—well, I guess 12:30 or so.

Q. And you were there?

A. Yes, sir.

Q. Did you come over to the headquarters when you heard about it?

A. Afterwards? I didn't come over. You see what it was, I had been talking to Major Koehl on the telephone that morning.

Q. That morning?

A. Yes.

Q. On August 25th?

A. Yes, and you know he said he had something to talk to me about that afternoon and I, you know—

Q. What time did he call you?

A. Well, I called him.

Q. What time?

A. Well, it was some place, sometime between
page 2632 } quarter of eleven and 12:15. I mean quarter
of twelve and 12:15. I am not sure of the exact
time but it was somewhere around 12:00 Noon, so I am giving
fifteen minutes leeway in each direction.

Q. So it could have been before 12:00 o'clock, between a quarter of twelve and 12:00 o'clock, you were talking to him?

A. Or it could have been after 12:00, before they had heard of the death of the Commander.

Q. You were talking to Major Koehl on the phone?

John Harnett

A. Yes.

Q. Was Mr. Rockwell there then, or had he just left?

A. I honestly don't know. I honestly don't know.

Q. What were you talking about?

A. Well, things in general, I think at the time, asking if some particular piece of party literature had come out yet.

Q. What particular piece of party literature?

A. I am not too sure. I think it was the White Power newspaper, but I am not too sure about that.

Q. The White Power newspaper?

A. Yes.

Q. Were you calling the Nazi Headquarters for the White Power newspaper?

page 2633 } A. Yes, to see if it was ready. I am not sure that was the piece of literature. It might have been the NSW, but it might have been—but I know it wasn't the Storm Trooper because the Storm Trooper had not come out, either the White Power news or the NSW, Nationalist Socialist World.

Q. Now, there's no question in your mind you had not heard any news that Rockwell had been shot when you were talking to Koehl?

A. Right. No. I said apparently. Apparently, Major Koehl hadn't heard the news yet either.

Q. He might not have been shot yet, maybe that was why.

A. That might be true, but I thought I would put that in.

Q. I thought I would put that in, too.

Did you call anybody else right after you talked to Koehl?

A. No. I put on the record player and another record after that and it was about 1:30 or so when I, you know, went, got in my car and started driving out toward Virginia, and I heard the news on the car radio.

Q. You were already on your way to Virginia?

A. Yes, at approximately 1:30 or so.

Q. Where were you headed toward?

page 2634 } A. The barracks.

Q. Did you go right straight to the barracks?

A. Well, yes. I was headed there anyway.

Q. Was Koehl there?

A. Well, I didn't get to see him. I had more or less a tentative appointment with him at 2:00 o'clock, but I was told by one of the fellows that all appointments are canceled.

Q. That is all.

John Harnett

Mr. Hassan: If Your Honor please, I think he went so far as to open the door for the \$64.00 question. I would like the Court to reconsider its ruling.

The Court: With respect to the remark that Rockwell made at the time?

Mr. Hassan: Yes, sir.

Mr. Harrigan: I didn't ask him about that.

Mr. Hassan: He went so far into detail that it's now a proper question to be asked.

Mr. Harrigan: I withdraw it. If he wants to ask it, I withdraw it.

The Court: You withdraw the objection?

Mr. Harrigan: I withdraw the objection.

The Court: All right, sir. Go ahead.

REDIRECT EXAMINATION

page 2635 } By Mr. Hassan:

Q. Did there come a time when you were there with Commander Rockwell at the time of this attempt when he said anything to you about any recognition of anyone?

A. No, he didn't say anything directly about recognition. He said—he made a remark, something like it was just like The Holy Father. You know more or less a tone of exclamation to neither me nor the patrolman who was standing there.

Q. He said just like The Holy Father?

A. Yes, in sort of an exclamatory tone.

Q. No further questions.

The Court: All right, sir.

RECROSS-EXAMINATION

By Mr. Harrigan:

Q. Have you told anybody that he said that?

A. Pardon?

Q. Did you tell anybody he said that, from then up to now?

A. Yes, I told the Arlington Police. They were asking me a lot of questions and they asked me quite a few things, you know, and more or less relating to what the Commander was saying after that attempt.

Q. Do you know who The Holy Father is?

page 2636 } A. Well, I found out just recently.

John W. Hancock

Q. Yes, he found out who you were, too, recently.

Did you talk to him?

Mr. Hassan: I don't know what is meant by that remark, Your Honor.

The Court: I don't think so.

Mr. Hassan: It sounds like Vidnjeovich making another phone call.

Mr. Harrigan: No.

Mr. Hassan: As a matter of fact, Frank Smith didn't have the boy's right name.

By Mr. Harrigan:

Q. Frank Smith just met you a little while ago up at the barracks, didn't he?

A. He didn't meet me, he happened to see me in there drinking a cup of coffee.

Q. You were there and that is how you met him?

A. Yes.

Q. That is when you found out who he was?

A. Yes, someone pointed him out to me as The Holy Father.

The Court: All right. You are excused.

page 2637 } Mr. Hassan: Mr. Hancock.

Whereupon, JOHN W. HANCOCK, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and your address, sir.

A. John W. Hancock, 506 North Madison Street, Arlington, Virginia.

Q. You were previously sworn in this case, sir?

A. Yes, sir.

Q. Now, directing your attention to on or about the 27th day of June, 1967, did there come a time when you were in the vicinity of the Nazi barracks on Wilson Boulevard when something unusual happened?

John W. Hancock

A. Well, the date I am not sure of, but in approximately that period of time.

Mr. Harrigan: Objection, then.

The Witness: What is that, sir?

Mr. Harrigan: I object. He hasn't laid any foundation.

The Court: I will let him proceed further to page 2638 } see if he can connect it up as to relevancy. Go ahead.

Mr. Hassan: In that period of time, did something unusual happen?

Mr. Harrigan: I object unless he connects it up to the period of time he is supposed to be connecting it up to and he hasn't done it yet.

Mr. Hassan: If Your Honor please, if he keeps objecting, I won't be able to breathe, much less tie it up.

The Court: I have no fear as to your breath, Mr. Hassan.

I will let him try to tie it up or obviously he cannot ask the final question. Go ahead.

The Witness: The date that I believe is in question, I was returning. I delivered my son to his paper route. The time could be anywhere from 3:30 to quarter of five because he was not too regular.

By Mr. Hassan:

Q. Could you lean up nearer the microphone, please, Mr. Hancock?

A. As I was returning down Wilson Boulevard toward Clarendon from Seven Corners, going to Clarendon—

Mr. Harrigan: Your Honor, May we approach the bench?

The Court: Perhaps, we better let the jury retire. Will the jury please take a short recess?

(Out of the presence of the jury.)

The Court: It seems to me, Mr. Harrigan, what I am going to have to do is to hear the testimony of this witness before I decide whether it's relevant or not. It's hard to decide in advance whether it's going to be connected up.

Mr. Harrigan: Your Honor, I think the prejudicial effect of it is such that we ought to have a hearing on it. He has already testified. I would just as soon argue it outside the

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presence of the witness, if I could, no reflection, Mr. Hancock, and tell you my point of view.

The Court: Would it not be better to let him testify and then argue it out of his presence?

Mr. Harrigan: You mean testify right now?

The Court: Yes.

Mr. Harrigan: Fine.

The Court: Go ahead, Mr. Hassan, and follow this line and let me see what he is going to say.

VOIR DIRE EXAMINATION

By Mr. Hassan:

Q. You were about to say that you were com-
page 2640 } ing home from taking your boy to get his
papers?

A. Deliver papers, yes, sir.

Q. Did you see anything unusual at that time, sir?

A. Yes, sir, as I came down Wilson Boulevard and approached the entrance into the—well, what we call Rockwell's Headquarters, the American Nazi Headquarters Building, a car coming out Wilson Boulevard, turned across in front of me. I had to slow down. Just as the rear end of the car entered the two brick abutments at the entrance to that driveway, why it stopped suddenly. As I say, I had slowed down. I live immediately in behind this area and I am quite interested in the activities over there because of my family and so forth. As I came even with the driveway, first one man and then another man came running out of the driveway. The car was sitting with the passenger's side door open. The two men came from that side of the car.

The Court: Excuse me, let me stop you. Did you say that these men came out of the car or couldn't you tell?

The Witness: I can't say that they came out of the car. There were two men in the car that turned in. There were no men that I could see at that time still in the car.

The Court: All you saw were two men run-
page 2641 } ning out of the driveway?

A. Two men. Well, one of them was still beside the car and another one was maybe six feet or so in advance of him.

The Court: Did you know Rockwell?

The Witness: Yes.

John W. Hancock

The Court: Was he one of the men?

The Witness: Rockwell was the second man.

The Court: Was he by the car?

The Witness: He was the one approximately by the car. My first thought was that here is one man *chasing* another man and they started down the sidewalk. I kept pace with them, a little bit behind them at that point. I stopped originally when the first came out and they turned and went down the sidewalk beside the brushy lot that extends down to Livingston Street. The man in the rear caught up. The man in the rear was Rockwell. The man in the rear caught up with the blond, medium heavy boy that was running first and when he caught up with him, I realized he wasn't chasing him, that they were both going in the same direction. Until that time, I thought one of them was chasing the other. The one passed him and got a little ways ahead of him, a little bit past the entrance on Livingston Street and stopped and
page 2642 } turned sideways and pointed up to the brush and said something and the blond-headed boy went up into the brush at that point. I had, by this time, passed them and was watching over. I was not much ahead of them but I had passed them. Rockwell continued running down the sidewalk. I turned into Livingston Street just ahead of them. There is a quick incline off of Wilson Boulevard on Livingston Street. Then, you drop down to a low place, I would say maybe a hundred, a hundred yards, it could have been a little less than that, down Livingston Street, still paralleling or going beside this thick brush and trees that are next to the Nazi Headquarters. I was interested in what was going on. I didn't know what was going on at that time.

I was watching Rockwell and looking back myself. This is a very narrow street. It is not a full-width street at all. It is fairly narrow in places and may be only ten to twelve feet wide. Two cars do not pass. One waits and lets the other by. I use this street regularly. I was watching Rockwell and he was running along stopping to look under the brush back this way and trying to look and run as he came and I was so interested in him that at the lowest point, at the time I was coming to the drainage, the culvert, that runs under that small road and only at the last minute did I see
page 2643 } somebody coming out of the brush on the right-hand side, running away from the side that the headquarters is on. He stumbled slightly because it is quite a steep incline out of the low place under the road. He stum-

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bled slightly there but, at my time of stopping, he was maybe four or six feet ahead of my bumper. He did not look at me but—

Q. Do you know who it was?

A. I feel that I do.

Q. Who.

Q. Well, I would like, before I say—I would like to see this gentleman on a side view. I have never seen him except at a distance and I would like to see this gentleman stand up and I would like to see a side view of him.

Mr. Harrigan: Your Honor, if he is not sure now, a side view is not going to help him any.

The Witness: I have never seen this gentleman except the way he is looking now.

Mr. Harrigan: What is this, a lineup we are conducting here now? I object to all his testimony.

The Witness: Other than the present situation, my only identification could come from newsprints.

The Court: Mr. Hancock, let me ask you this. Did the police ever talk to you about this matter?

page 2644 } The Witness: Yes, sir.

The Court: Was some report then made to the police of this occurrence as far as you know?

The Witness: As far as I know, there was.

The Court: Did you ever look at the car that Rockwell had been in?

The Witness: You mean on this occasion?

The Court: Yes, sir, on that occasion, on that particular day.

The Witness: No, I did not go back.

The Court: You did not inspect that car? Did you call the police or did they come to you.

The Witness: As I say, I did not, at this time, know there had been a gun fired.

The Court: When did you find that out?

The Witness: Proceeding a little bit, the man ran across in front of me. I was on my way home. That is about two and a half blocks up the street. I was proceeding on Livingston. I don't remember what I went home for, but a short time later, I came back and there was a patrolman, a uniformed officer, standing on Livingston just beyond, maybe forty feet beyond, the point where the low spot that I am talking about, on be-

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yond, and I asked him what all the excitement
page 2645 } was about and he said somebody had taken a
shot at Rockwell. That was the first time that
I knew, but this was maybe twenty or thirty minutes after
the action that I have described.

I don't know whether I am supposed to volunteer this or
not. My description of the man that I saw running across
before there had ever been any apprehension or declaration
that they thought they had a certain man or anything like
that, my description was made as to general appearance and
like that, general stature. I don't know if you want that.

Mr. Harrigan: What description are you talking about
now?

Mr. Hassan: I don't know.

Mr. Harrigan: Who was apprehended?

The Witness: I would say there was no apprehension.

Mr. Harrigan: Nobody?

The Witness: Nobody.

The Court: What description did you give the police at
that time?

The Witness: At that time, I said I had seen a side view
of the fellow at close range, that his skin texture was what
you could call olive or swarthy and Italian, dark headed,
that his hair line, that is his hair growth, was
page 2646 } up at the front, at that time, and I do not re-
member now at that time I—I told what the
gentleman had on as I remember it, but at this time I do not
remember it.

Mr. Hassan: May I ask two questions?

The Witness: Yes.

Mr. Hassan: Did there come a time that you believed it
was John Patler?

The Witness: Yes, sir.

Mr. Hassan: Can you say that today under oath?

Mr. Harrigan: Objection, Your Honor. He told the TV
cameras that.

Mr. Hassan: Who did?

Mr. Harrigan: Mr. Hancock.

The Court: I will let him answer the question.

Mr. Hassan: Can you identify him today as the man that
you saw at that time?

The Witness: I again would ask to see a side view of the
man here.

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The Court: Do you have an objection to that for that purpose?

Mr. Harrigan: I certainly do, Your Honor. I don't feel like conducting a lineup in the middle of a trial.

Mr. Hassan: I am not trying to, Your Honor.

page 2647 } Mr. Harrigan: I don't know what you call it, but he gets half a dozen people here to stand up. I do object. I object to this whole issue coming into this trial.

The Witness: From where I can see, I can say that Mr. Patler could very well be the man. I will not say that he is the man. I have asked to because I have not seen him before, I mean to actually look at him. And my testimony here previously, I was here a short time. I did not even know him, but this gentleman could very well be the man.

The Court: All right, sir. Have you told us about all that you know of that occurrence?

The Witness: The only other piece of information that I can give is that Rockwell was close enough behind my car that, had my car not been there, he would have had no trouble in seeing who it was that had crossed in front of me. As I say, the road is narrow and the brush comes up close on each side. He was intent on looking back toward the headquarters and the brush at the time that the man came up and startled me and I had to come to a quick stop.

The Court: Now, you say that when you got abreast of his car, there was no one in it. There had been two men, but evidently—

The Witness: When it turned across in front
page 2648 } of me, there were two men in it that I could see.

When I came up to where I could look in the open, the right-hand door was open. One man was already coming out and Rockwell was beside—approximately beside the car or in the brush there beside the car.

The Court: Now the man you saw coming out of the car, how would you describe him?

The Witness: No, I didn't see anybody coming out of the car, coming out of the driveway.

The Court: How would you describe him?

The Witness: He was about four inches shorter than Mr. Rockwell, fairly heavy, I would call him medium husky, blond hair, either short or starting to bald a little bit on the front. I believe it was a crew cut though, that is as far a description—and a man in his twenties.

The Court: Blond crew cut?

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The Witness: Blond crew cut.

The Court: Beginning to get bald?

The Witness: Well, as I say, he went back into the brush. I never saw him again. He was starting to get a little bit bald on the front or else it was a crew cut.

The Court: You say he ran ahead of Rockwell and Rockwell caught up with him?

page 2649 } The Witness: Yes, and Rockwell caught up with him and passed him and swung around and kind of running sideways and sprinted up the bank into the brush and that fellow turned and went into the brush at that point. Rockwell continued on down the sidewalk and turned at right angles to the right at Livingston Street and I was leading him just a short distance at that time.

The Court: What is your best recollection of the date of this occurrence?

The Witness: Well, it would have been four, five, or six weeks before Rockwell's death. The date is not—I don't know except that when I talked to the patrolman, he said that somebody had taken a shot. Later, in talking, I understand that I was told that there was a hole in the windshield. That was a black, if I remember, a black Buick, which I am not certain, but it was either a very dark blue or a black Buick automobile.

Mr. Morris: Your Honor, I can't hear him too well. I wonder if he could speak up.

The Court: A hole in the windshield?

The Witness: I was informed that. As I already stated I did not see the car.

Mr. Harrigan: A bullet hole in the windshield?
page 2650 }

The Witness: That I was informed there was.

The Court: All right, sir. Do you gentlemen have any questions of him? I will excuse him and hear your arguments if you don't.

Mr. Harrigan: I have no further questions.

Mr. Hassan: I have no questions.

The Court: All right. Please wait outside in the witness room.

(Witness excused.)

Mr. Harrigan: According to Mr. Hancock, he doesn't know what date this was. It could have been four, five, six weeks

before, which maybe he could be off on that, but he says he saw a car pull in the driveway. He is allegedly driving by and he sees the guy get out and he sees the guy apparently walk up in front of the car and I don't know if we have any pictures of that driveway, but he must have been driving at about one-half a mile an hour in order not to get by before all this happened. But, in addition to all that, he sees a blond, crew-cut guy come running along with Rockwell, ahead of Rockwell and Rockwell catches up to him. Now, I don't know what incident he is talking about. This other fellow, Harnett, he is a little short guy with a little black mustache with black hair, and according to him, Rockwell got out, page 2651 } chased somebody and sent him up to the house.

No mention of any blond, crew cut at all, and then all of a sudden, after this big run-through, for some reason or other he stops and trails along. He sees a guy jump out in front of the car and he has to look and see a profile of John Patler to know if that was him.

I think that leaves a great deal to be desired. It doesn't even sound to me like it is the same incident. As a matter of fact, there weren't two facts you can put together which would indicate it was, so based on his testimony, the blond crew-cut guy is running, and medium heavy build, the guy with Rockwell and so forth. We don't think any foundation has been made and the *predjudicial* effect of having him sit up on the stand and saying, in his opinion, he thinks Patler was the guy who shot Rockwell before, would be so prejudicial that we couldn't balance it, even through cross-examining, that it was probably entirely a different incident, which it apparently was. Further, that he testified that he doesn't know if this was the same man. He needs to see a side view of him. It's not hard to stand somebody up in the Courtroom and look at them and say that is the guy. The real trick is if you put them up with eight or ten other people that look similar.

page 2652 } The Court: Then you say the Wade case?

Mr. Hassan: Yes, look at the Wade case.

Mr. Harrigan: Pick a card, and you have got a deck of allies and watch me pick out a case. Anybody could do that. The point is he couldn't do it unless he saw a side view, so based on their testimony, we move to exclude his evidence on the ground that they haven't laid any foundation as to date, the same time, the same incident. As a matter of fact, the facts show different. He said on the stand there that he would have to see a side view in order to be sure and the probative value of his testimony would be next to nothing.

Further, the other witness said he was sure it was 2:30 to 3:00. This man is delivering papers 3:30 to 3:45, which is nothing, nothing comes together. Not even the time.

Mr. Hassan: Everything comes together, Your Honor. There isn't any question about that. This first man, there isn't anything that says that both Harnett and Mr. Hancock were looking at the situation at the same time, because Mr. Harnett said that Commander Rockwell told him to go up to the barracks and get the men to come down there. He never did testify as to what happened after they came down there. Mr. Hancock did not say he heard a car, he said he saw a car turn in and stop and two men run. We don't
page 2653 } know who the two men were except that he knew one of them was Rockwell and Rockwell certainly wasn't chasing him, because he told him to go up into the woods. Then, they came along and they see he is watching first Rockwell run around looking in the bushes and he is ahead of them and then this man runs in front of him. He has to stop short and this man is six feet in front of him. I think up to that point everything falls in line. I, however, am not going to pursue it.

Mr. Harrigan: I am not going to blame you.

Mr. Hassan: I am not going to take from Harrigan what he said because it is ridiculous but I am not going to pursue it. This is not the identification that this man gave me before I called him.

The Court: Thank you, Mr. Hassan.

Do you wish to release him as a witness at this point?

Mr. Hassan: Yes, Your Honor.

The Court: Tell the witness he is excused.

Are you ready for your next witness, Mr. Hassan?

Mr. Hassan: Yes, sir. Sergeant Kadel.

Mr. Harrigan: Before he calls the jury, I would like to know—

Mr. Hassan: Are you anticipating my testimony again, Mr. Harrigan?
page 2654 }

Mr. Harrigan: Yes, Mr. Hassan.

Mr. Hassan: Oh brother, I would like to have that crystal ball of yours.

Mr. Harrigan: If the only thing he is going to call him in for, is he went to Sam Ervin's house and talked to him.

Mr. Hassan: I am going to call him in, that he made a prior inconsistent statement at the time of the departure of this defendant at the house.

Mr. Harrigan: My answer to that is simply this, that he went to the house under color of an illegal warrant, and if

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he goes in the house under the color of that warrant, what he gets there and who he talks to and so forth, is not admissible into evidence and that is the Wassong case, 100 per cent down the line. We have already entered it and stipulated that that was an illegal search.

Mr. Hassan: What is *source* for the goose is *source* for the gander. He put into evidence the shovel that was found down there. If it is legal enough for him to do that, it is legal enough for him to do this.

Mr. Harrigan: Any objection on that score would be waived by the defendant by putting Mr. Ervin on the stand and letting him testify. Having done that it is page 2655 } proper to cross-examine solely for the purpose of impeachment, as to the prior inconsistent statements, he denied having made the prior inconsistent statements. Now, it seems proper to me to bring in the witness to establish just that, not any independent evidence to discover the search. I gather that is not the purpose for which Mr. Hassan calls him.

Mr. Hassan: I have got two questions, Your Honor.

Mr. Harrigan: Any conversation with Mr. Ervin during that search, we say, cannot be used.

The Court: The objection is overruled.

Mr. Harrigan: Exception.

The Court: Call the jury.

Which Kadel is that, Mr. Hassan?

Mr. Hassan: Walter.

Whereupon, WALTER H. KADEL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir.

A. Walter H. Kadel.

page 2656 } Q. You have previously been sworn to testify in this case?

A. I have.

Q. Directing your attention to the 26th day of August, 1967, did there come a time when you had occasion to talk to Mr. Sam Ervin at his home?

A. I did.

Walter H. Kadel

Q. What, if anything, did he tell you about the time of departure of John Patler from his home on the 25th of August around noontime? What did he tell you, if anything?

A. He told me that John left his house at ten minutes after eleven.

Q. Did he tell you under what circumstances he left?

A. He said that they had been out shopping earlier and when they got back he just left.

Q. No further questions.

The Court: Mr. Harrigan?

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Yes, Your Honor.

Now, Mr. Kadel, did you write that down?

A. No, sir.

Q. You are the same Mr. Kadel that spent page 2657 } most of his time posing for pictures, aren't you?

The Court: Objection sustained.

Mr. Hassan: I wasn't going to let him fall in that trap. That was John, that wasn't Walter.

By Mr. Harrigan:

Q. You were in charge of the investigation?

A. Yes, sir.

Q. You said you didn't write that down, what time he left the house.

A. What time I left the house?

Q. What time you say Mr. Ervin said he left the home.

A. No, I did not.

Q. Didn't you think that was important?

A. That was important enough to remember.

Q. All right, now, you went down to the home and you had some difficulties there with Mr. Ervin, didn't you?

Mr. Hassan: Objection, Your Honor.

Mr. Harrigan: He walks in and says he didn't write anything down.

Mr. Hassan: I am going to object to him testifying. He is going beyond the scope of direct testimony entirely.

The Court: That is true.

Walter H. Kadel

Mr. Harrigan: I want to show some bias,
page 2658 } Your Honor. He was going to tear the man's
house down. That is what he told him.

The Court: You want to show bias against the defendant?

Mr. Harrigan: Against Ervin, the defendant. There's no
question about bias against me. I want to go into circum-
stances where this was told and surrounding circumstances.

The Court: The objection is overruled.

By Mr. Harrigan:

Q. All right. Now, all right, now what time did you get
down to Mr. Ervin's house?

A. Around 6:00, 7:00, between 6:00 and 7:00, I believe.

Q. How many other officers did you have with you?

A. Three.

Q. Three other officers, would that be Light, Crickenberger
and who's the other one?

A. Faulkner.

Q. Who was there at the house when you arrived?

A. Alice Patler, I believe Alice's sister, and Sam Ervin.

Q. All right. Did you have some discussion with the
sister?

A. I didn't have any discussion with her. She
page 2659 } had plenty with me.

Q. Anyway, there was an argument there of
some sort. She was very hostile toward you?

A. She was hostile, so it wasn't an argument.

Q. I see. Was she there when Sam was there?

A. When this took place?

Q. Just answer my question.

A. No, she wasn't present.

Q. Now, did you have any discussions in front of Sam
while she was there?

A. Just before you walked in?

Q. Yes. Well, you didn't talk to them while I was there.

A. No, we did not.

Q. So, it was before I got there, wasn't it?

A. Just a few minutes, yes.

Q. So when I walked in, you were upstairs in John's room,
right?

A. Just getting ready to leave.

Q. So, where in the house did you talk to Mr. Ervin?

A. In his bedroom.

Q. Did you go in there to search his bedroom?

Walter H. Kadel

A. No, sir.

page 2660 } Q. Nobody else was in there except you and Mr. Ervin?

A. That's correct.

Q. Did you have any discussion with Mr. Ervin about whether you had a right to search or not search?

A. No.

Q. You didn't?

A. No.

Q. Didn't you tell Mr. Ervin that you would tear the whole house apart if you wanted to under that warrant?

A. Not at the time I was in the bedroom. I think that is what you are referring to.

Q. Did you tell him at any time?

A. I told him I didn't want to tear the house in pieces to find what we were looking for.

Q. As a practical matter, Mr. Ervin wasn't telling you anything, was he? He wouldn't cooperate with you at all, would he?

A. Mr. Ervin didn't have anything to say. All the talk was with the sister.

Q. He didn't have anything to say?

A. Other than showing me his guns.

Q. That was the same sister that you later had mistaken for another girl, right?

page 2661 } A. That is what you said.

Q. I am asking you, did you?

A. I imagine so, yes, sir, when you pointed them out in the Courtroom.

Q. That's all.

The Court: Mr. Hassan?

Mr. Hassan: No further questions. No further witnesses.

The Court: Ladies and gentlemen, the momentous time has come when the evidence in this case is closed. The Court will recess at this time and take up the matter of instructions in the morning. It will probably occupy us for several hours and I will just let you all remain in such comfort as is available to you in your quarters until we call for you, because I can't be sure when we will get through that, but sometime during the course of the day tomorrow, I hope to have the instructions in shape to give you so that you then may receive the instructions of the Court, the arguments of counsel and then

the case will be submitted to you. At this time I won't set an hour for it. I will just call upon you when we get ready.

Now, that the evidence is all in, there will be a particularly strong tendency, I am sure, a natural one, for page 2662 } you to come to your final conclusions. I would ask you to use your best efforts not to do that. Something that may come to you in the instructions of the Court and the final arguments of counsel might change your entire way of thinking from whatever opinions you now hold, so I will ask you not to discuss the case among yourselves. Try your best not to come to your final conclusions, but to keep your mind open until you have heard the instructions and those arguments in a case that has lasted this long.

The summations which counsel will give you might be particularly important in refreshing your recollection about some of the testimony which may now elude you, so that in order that you may have the entire picture, I will ask you to do your best to keep your mind open and not come to some final conclusion until the case is finally submitted to you, we will ask you.

We will see you tomorrow and I will see that the word will get to the Sheriff in order that you will be called somewhat in advance so that you will be over here when we are ready to go.

Mr. Harrigan: We would like to reoffer all our exhibits. I think they are all in, but just to make sure that they're in, I reoffer all of them.

page 2663 } The Court: Gentlemen, would you give me copies of your instructions?

Mr. Morris: Your Honor, we have a motion to make.

Mr. Harrigan: We will make it tomorrow morning.

The Court: Yes, but give me copies of your instructions. I'd like to mull those over, if you don't mind.

Did you want to argue the motion now?

Mr. Harrigan: No, Your Honor. We will argue it tomorrow.

The Court: All right. Court is recessed until 10:00 o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., the taking of the Court hearing was adjourned to reconvene December 15th, 1967, at 10:00 o'clock a. m.)

The Court: All right, sir. Are there any Motions gentlemen?

Mr. Harrigan: Yes, Your Honor.

The first Motion we have concerns Sergeant Kadel's testimony. We move to strike his testimony. That was the last piece of testimony given as to the inconsistent statement made by Mr. Ervin and in the alternative that if the Court does not strike that testimony then we ask that it instruct the Jury that that testimony is merely to be used to show an inconsistent statement and the Jury is not to take it for the truth contained therein and that is, that Patler left at 11:10.

I think that is a correct rule on inconsistent statements, the Jury would be instructed as to the limit of its consideration of that evidence if it is to believe to really show an inconsistent statement and that it has no probative value at all as to show what time Patler left the residence.

The Court: Mr. Hassan, do you wish to speak on that?

Mr. Hassan: Well, I don't know what the basis for striking it is but it certainly goes to more than a previous inconsistent statement. It goes to the question of credibility of the defendant, of Sam Ervin and it was offered to show that

page 2666 } Sam Ervin had previously made such a statement and they would take that in the light of the comparison of Sam Ervin's statement and Mrs. Patler's statement.

The statements that were obviously from all the evidence that there was a reconstruction of time and reasonable conclusion laying out a schedule for the course followed by the defendant on the day of the event and this influences the statement to the fact that he had previously made a prior statement if the Jury believes that what Kadel says goes to the credibility and not to the truth of the statement, but the question of whether or not there is a definiteness to the time testimony reconstructed and whether or not there is a possibility of variations which the Jury can arrive at.

I think it's perfectly admissible. It was definitely an inconsistent statement. It was made at that time when the value of the time was of no immediate importance to either Sergeant Kadel or to Mr. Ervin. The value became material at a subsequent time when the time schedule was being reconstructed. At least there will be some question as to the exclusion of Sergeant Kadel's testimony.

The Court will recall that Sam Ervin testified and I called

the Court's attention to the fact that I had turned it over to the Clerk and it was not locked up by the Clerk and not returned to me until the conclusion of the evidence yesterday.

page 2667 }
Mr. Morris: What was the purpose of that, Your Honor?

Mr. Hassan: Just so the question of the exclusion of the witness and possibility of him having heard the testimony of Sam Ervin when that arises.

Mr. Harrigan: There were twenty or fifty witnesses in the Court Room which could have told him that.

Mr. Hassan: It may have been but you would have to ask him. It was not the question.

The Court: The Motion to strike the testimony is denied. As to the Motion to give a cautionary instruction, I'm not sure that you gentlemen are talking about different things. It seems to me that you are substantially in agreement that that cautionary instruction should be to the effect that the Jury may consider these rebuttal testimony of Walter Kadel as effecting the credibility of Sam Ervin by showing that he made a prior inconsistent statement if they believe it and not for any other purpose.

I gather that's what both are thinking about.

Mr. Hassan: No. I think it should be that they can take it, that that also goes to the question of the testimony of

Mr. Hunt and Mr. Shehee of this reconstruction
page 2668 } of the trip to the post office, the bank, the paper company, gas station because of the starting time is effected by such statement.

The Court: Well, that I assume, Mr. Hassan, would be your final argument to the Jury but they don't know what the starting time was except through hearsay and they're depending upon the testimony of Sam Ervin in part as to that.

Mr. Hassan: But any instruction should not foreclose them from that consideration.

The Court: Yes, but they wouldn't impeach the testimony of the witnesses because they didn't testify to the direct starting time.

Mr. Hassan: But it's important for impeachment. It goes to the credibility of the time schedule.

The Court: Well, I don't think it goes to the credibility of Alice Patler who was not impeached by any prior statement.

If they wish to believe her testimony, they can have an independent basis for that. I would agree though that it

goes to the credibility of Sam Ervin and they may weigh the testimony of Sam Ervin against the rebuttal testimony of Walter Kadel and come to such conclusions as they see fit as to the credibility and I will grant that cautionary instruction.

Do you want that in writing or is an oral
page 2669 } instruction sufficient?

Mr. Harrigan: An oral instruction is sufficient.

The Court: Somebody remind me to make it.

Mr. Harrigan: Yes sir.

The Court: All right.

What else, sir?

Mr. Harrigan: Now, Your Honor, we would like to renew our Motion to strike the Commonwealth's testimony.

At this time, a different test is applied which was not disclosed at the end of Commonwealth's case where the Commonwealth's evidence was weighed in the most favorable light and then a ruling on that basis at the end of the case.

The question now is does all of the evidence present a Jury question or taking the evidence that is uncontradicted of the Commonwealth's and of the Defense, is there sufficient evidence in this case to make a Jury question.

Now, since the Commonwealth had their evidence put on, there has been quite a few Defense Witnesses, almost all of which have gone un rebutted. There has been the wife, the father, an independent witness, Mrs. Luba who saw the defendant and she said between 11:00 and 11:15, and the bank clerk and so forth, establishing the alibi, and there's been Mr. Patler.

Now, the question comes down to this at this
page 2670 } point. If that evidence is uncontroverted and
assuming that you consider the Commonwealth's
evidence now in the light of whether it's sufficient to sustain a verdict of guilt, we feel that under this present stature of the case that the evidence as a whole will not sustain a verdict of guilt and more particularly the Commonwealth's evidence that is necessary in order to rely on the guilt verdict. We have argued that all of the circumstances from which they have to draw a conclusion of guilt has to be shown by full proof, that there cannot be any reasonable hypothesis of innocence and that is the law and the evidence as it now stands creates a reasonable hypothesis of innocence. The Jury is not at liberty to guess between two interpretations and if they're not at liberty to guess and the hypothesis is there, as a matter of law, there is a

reasonable doubt then and the Court should take the case away from the Jury. And we found another case, Porterfield case, which is in point and this again goes to the argument we made the other day that the only way the Commonwealth can get any type of chain of circumstances here at all is through an inference on an inference basis.

This was a case where a B and E, and grand larceny charge was tried and one of the main points in the case was a broken blade in a knife that was found page 2671 } in the store and they attempted to show that this blade had been in the previous possession of the defendant and inferred from that therefore, that he was the one that broke in the store.

It says the accused was indicted for feloniously entering a bar room with an attempt to grand larceny.

One of the circumstances relied on by the prosecution was that a portion of the knife blade was found in the bar room the morning after the alleged offense was committed it was claimed that it was a part of the blade of the knife shown in the possession of the accused very recently for the commission of the offense charged.

It is elementary that the guilt of an accused must be shown beyond a reasonable doubt whether the evidence relied upon is correct or circumstantial, in order to warrant a conviction For a crime of circumstantial evidence every essential fact or circumstance upon which the conviction depends must be proved by competent evidence beyond a reasonable doubt.

The Court: What is the citation?

Mr. Harrigan: Porterfield case, Your Honor, and it's 91 Virginia at Page 801.

Now, the point in this case is, we think, it is circumstantial and we again move to strike out certain evidence of the Commonwealth. The first thing, page 2672 } the bullet on the farm.

Now, the bullet in the tree on the farm is a very material circumstance if they can be shown to be put there by the defendant or if it's to be inferred that the defendant put them there and the evidence on that point is simply this. In July he was target practicing down at the farm. Tom Miller saw him target practicing when he was painting a fence. He didn't know if he was using a shotgun or a pistol and there was no evidence at all as to what section he was target practicing in.

There is evidence in the case that they practiced down there quite frequently and it was corroborated by the Com-

monwealth's evidence that there are lots of holes in trees down there.

Now, the question comes down to this, as in this Porterfield case, is it possible to reach conclusions that he was target practicing down there with that gun in July, and from that conclusion and if he had the gun in July, then therefore he must also have had the gun in August when the main factor they're relying on is the bare fact of finding bullets in the tree.

We contend that that fact ought to be stricken from the record because the Jury—in order to establish page 2673 } the essential fact that it was Patler putting the bullets there instead of Sam Ervin or instead of somebody else or a friend or one of Rockwell's people at the very best they would have to guess that he put them there and they would have to guess that, from the mere fact that they found there, and he's on trial here. If Sam Ervin were sitting in that chair, they could guess that he put them there or anybody else connect with the farm or anybody else sitting there, they could infer they put them there or Tom Miller. They could infer that he put them there. Then it isn't possible to go on to a further conclusion that therefore, since he put them there he had possession of the gun and still had it in August. It would be again based on an inference upon an inference and the Jury should not be allowed to base an inference which may be weighed and diverted to show guilt out of the circumstances which is so tenuous that they have to guess either way in order to allay it.

Under this Porterfield case and the very nature of the facts in this case, we move to strike out that testimony again as having no probative value and on its face being not sufficiently certain to establish any fact from which an inference can be drawn against Patler.

We then move to strike out the coat again page 2674 } on the same ground that the coat was found on Larrimore Street. So far it hasn't been connected up with anything in the crime at all. There is nothing in the record that indicates it's the coat somebody ran with or if it was, it hasn't been identified. There was nothing on the coat which would tie it in with the gun or the roof and/or the defendant at all and the only evidence on the coat is from three ex-Nazi members who came in. Two of them said yes he had a coat something like it and he had similar one and I think that's the one he had. So on that point there, the only possible reason for their testi-

mony is to try and show that the defendant has possession of the coat on a previous occasion sometime ago and assuming that fact to be so then you have to infer from that, that he also had possession of it on the 25th and in view of the testimony that came out that even if he had it, whether he had it in Spotsylvania, there was testimony that Rockwell went down and broke in the room and brought all his clothes back up here and no one has testified that he had that coat at any time beyond when, I think Mr. Pace said it, which I think was almost a year ago.

So without those two elements if they are not sufficient and certain they have to be proved beyond all reasonable doubt to establish this chain because otherwise page 2675 } all you have is the testimony of one man who said that he loaned him the gun two, three years ago, '64 and he told him it was stolen so we move to strike out those two parts of the testimony and then move to strike all the testimony on the ground taken as a whole that it does not establish the defendant's guilt or is not a Jury question here to establish the defendant's guilt to the exclusion of every reasonable hypothesis.

Thank you.

Mr. Hassan: First of all, Your Honor, I think there is no change in the matter of the Jury question. That has been brought about by the defendant's testimony. The matter of the striking of the evidence of the bullets and casings from the farm are matters which the defendant studiously did not testify about. The defendant did not testify that he was there in July, that he was target shooting with some other gun. He just avoided it which leaves for the Jury the question of determining whether or not they believe Tom Miller when he said while he was painting the fence in July that the defendant was over there in the meadow target shooting. If Tom Miller had not indicated the place, Crickenberger, Eagle, Bradley and Kelly would not have found the casings and would not have found the shells.

page 2676 } There is no inference on an inference. There is absolute testimony that these casings and the bullets came from this gun, exclusive of all other weapons. There is no doubt. There is no hypothesis regarding the bullets and the gun. There is no hypothesis if Tom Miller is to be believed but that the defendant fired those bullets.

There is no defense testimony with the exception of the vague testimony of Sam Ervin that they always target shot,

he did not deny that there was target shooting in July and he did not firm it. They were always target shooting. Although I think there is no basis that that is strictly a question for the Jury and for the Jury to answer and is not a matter for a ruling of the Court.

Undenied, the reasonable hypothesis beyond a moral certainty on the basis of this evidence on the credibility of the witnesses if believed, there is no room for doubt or hypothesis.

Now, as to the coat. There is no evidence that has been introduced beyond that which was already received in the Commonwealth's case that this coat is not the coat of the defendant.

He did not say this was a coat which was not returned to me after Rockwell took my things. He was
page 2677 } asked what clothing He did not say it. The
Defense in redirect, avoiding the circumstances of the cross examination, is a tactical matter which came back to the coat but even then when the Court allowed them that when they ought not to have been allowed it on redirect examination whereas, a tactical matter they tried to avoid cross examination. They never took it out of the bag except for Mr. Harrigan to stand at the table and to put it back in the bag. They never showed it to the defendant. They never asked him to try it on. They never asked him was that his coat. They never asked did he own a coat like that.

They asked him one vague question, did you own any other coat and they didn't say when. They didn't raise a doubt. They didn't advance any evidence and the question is before the Jury whether they believe the witnesses who say that was Patler's coat. There is no question about the flight. There is ample evidence of a man quickly in flight with a coat of this nature. There is no question that this coat was found right on the route of flight at the very end of the eye witness to the flight under a bush.

I, in fact, believe that the description of the Mexican, dark skin type individual was produced and brought about by the swaying and the stopping in flight which has that
effect on the texture of the skin to give that
page 2678 } impression.

None of this was reached in the defendant's case. He elected to testify and he elected to ignore the vital elements of this case and not testify about them and I think there is a question now for this Jury to make the determination of this case, of the whole picture, if the Jury believes the evidence of the Commonwealth if they attach credibility

to its witnesses. If they consider the hypothesis which has been thought to have been established by the Defense, they can come but to one conclusion and that is that there is no hypothesis of innocence on any essential fact in this case.

We have experimental time trips. We have two young men run a flight but they ignored every centilla of essential element to determine time in the known route. They didn't go on the roof, they didn't climb down on the cable, they didn't go over the wall and come back and go over the wall in another place and look at the street. When they went down the street, they didn't stop and look back and they didn't know where to go. Nobody knew where to go after the coat was found under the bush until the gun was found and they didn't know what route and nobody knows what route was taken through Bon Air Park. Somewhere in Bon Air Park which is established that the man in flight with the gun which beyond all certainty is the gun that killed

George Lincoln Rockwell, stopped and went
page 2679 } under a bridge and placed the gun between
two rocks in six inches of water.

No one knows how long that took and then those boys went through an open field into an apartment area, the least likely of courses which is to be followed by a fleeing man because right at the bridge is a hill which leads to a canyon with high steep bushy slopes. Children play houses, there are caves in the side of the canyon that goes three or four blocks further through Bon Air Park to Kensington Street which leads through a residential area, not an apartment area with the activities of an apartment area right to Ivanhoe Street, Illinois Street, right on to Washington Boulevard where the defendant was seen. There is such uncertainty in time and such a slight variation between the time of the start of the flight which is known and the time of the view of Inspector Cole that is absolutely accounted for by the proven facts added to the time which they spent.

We have another test in time based on complete clear assumptions of what time was consumed. We have an uncertain time of beginning. We have an uncertain time of purchase of gas. We have an uncertain time of a post office mail box situation. The gas station man didn't know when.

It could have been before or it could have been
page 2680 } after, he couldn't pin it down.

The next attempt at time was in the Fidelity Bank. It could have been before 10:15, it could have been after 10:15. No certainty in time could be established.

The post office on Wilson Boulevard could have been any-time from 7:00 in the morning until 5:00 at night. There is no certainty of time. It could have been anyone. There was no identity of the individual. It's all uncertain.

It's clearly a question for the Jury, clearly a question of reasonableness and credibility of witnesses and accuracy of hind thoughts, guesses.

Then we have a trip, just the day before yesterday, when the defendant was showing this trip, it appeared quite significant to me that when he crossed the thirty foot bridge at the end of Fairfax Drive and went under the railroad track his first statement was—this is the way I go to Wilson Boulevard and on up Wilson Boulevard. It's not how he went or alleges he went but how he could have got to the scene.

What other testimony. There is not a centilla of testimony in this case as to how the man got on the roof, only how he got off. Complete conjecture as to how he got on the roof and there is no evidence. It does nothing to the case

page 2681 { of the Commonwealth to have this detective stand on a wall. It creates no doubts. Lieutenant Fuchman got up there on a eighteen inch step, maybe that's how he got up there. But there was no evidence in the case. It rebutted nothing. None of the witnesses for the Defense established one centilla of doubt. In fact, the entire Defense case improved motive, strengthened opportunity. The Smiths added nothing. Mrs. Smith was certain that this was the gun but knew nothing of guns. Mr. Smith who was fairly familiar with everybody and extremely knowledgeable with everything wasn't sure whether what he saw was a 7.63 or a 9 millimeter. He didn't help very much. He's the kind of a fellow that sits at one end of a bar room and looks down and sees someone who doesn't know each other and he says did you hear what he said about you and then he goes to the other one and says you should hear what that guy just said about you and he sits back and watches it all. George Lincoln Rockwell said it looked like the holy father and he was called holy only because of the number of times he had been shot and then he's a great guy. He's down here. He's added security. He's the big investigator. He's going to check into things. He's the investigator who never investigated anything until after the fact. Of course, Patler had a lot of trouble with Rockwell

but Patler is a fine guy and Rockwell is a fine
page 2682 { guy and didn't really amount to much. Nothing was added but to increase the possibility of

this Jury determining animosity, determining Motive. The defendant didn't help himself. He had a one man organization for one operation, one flyer in May that was still going on in August. There are loads of questions and not one centilla of hypothesis of innocence that attacks any essentials of this case.

There is no possibility that as a matter of law this Court can ignore the Jury's duty and strike this evidence.

The Court: The Court is of the opinion that the Motion must be denied.

I'm in some doubt as to whether the Highland County evidence is essential to the Commonwealth's case and it appears to me that perhaps in view of some of the witnesses in the case, the Court would have to let the case go to the Jury even if that weren't in the case but that's really unnecessary to the determination.

Insofar as the evidence from Highland County is concerned, I'm sure that Mr. Harrigan and Hassan correctly stated the law when he said where a chain of circumstances is to be established, each circumstance must be established by sufficient facts and would prove the main facts themselves. Each essential circumstance at least must be testified to by the testimony which would allow the main fact to go to the Jury.

page 2683 { Well, consider then the case if it were illegal to fire a 7.63 Mauser automatic. Suppose it were illegal to possess one as if it were a narcotic. It would merely be that he would be on trail for firing a 7.63 automatic and the testimony would be that someone saw him holding target practice on Sam Ervin's farm on some undetermined date in July and on some subsequent date some detectives went and dug some bullets out of the tree. Would that not present a Jury question on that theoretical crime? Would that not be enough to go to the Jury. It seems to me it would so that the fact itself would be established with enough certainty to present a Jury question on it. But I'm not entirely sure that that is essential to this case anyway.

Mr. Hassan: If Your Honor please, I think it's entirely essential in view of the fact that the defendant now denies that he ever had this gun and he only saw it two times and it becomes quite essential to this case.

The Court: What you're saying, is that it has been put in issue.

Mr. Hassan: It has been put in issue by the defendant's testimony.

The Court: It has indeed been put in issue. I'm not sure it's an issue of the Commonwealth's case, that the page 2684 } Commonwealth must stand on or fall on and it seems to me a Jury question is presented upon the whole evidence beyond question and that this Court cannot in this posture of the case take the case away from the Jury.

Mr. Harrigan: On your last ruling regarding the 7.63 there are other cases which are very close on that type of case and even closer and that is the Crisman case where there is narcotics found in the car with several individuals found in the car and that is a possession crime also and mere presence in that car is not sufficient and there's case after case on that. It's not sufficient to establish the main fact that they had the narcotics and I think the Crisman case is probably one of the best Virginia cases on that point and that case was reversed on that basis.

The Court: In that case there was no evidence that the man had used narcotics but in this case there is evidence the man fired a gun.

Mr. Harrigan: Well, that's really different then because I say Mr. Miller's testimony in this case was not that he had fired that gun. There was testimony that he fired a gun. As to what section he fired a gun, was not gone into at all by Mr. Hassan. He said I can't watch and paint the fence at the same time. That was his statement.

page 2685 } The Court: True, he did not say he fired that gun but don't you think the Jury question would be then presented over the fact that he fired that gun or not and by the fact that the bullets from that gun were found in the tree.

Mr. Harrigan: If there were not bullets down there, I would say it's a Jury question but the Commonwealth's own evidence says the trees were loaded with them.

Mr. Hassan: I didn't hear it that way.

The Court: I didn't hear anything about anybody picking out any bullets.

Mr. Harrigan: Exception.

The Court: All right, sir.

(Whereupon, at 12:45 p. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m.)

The Court: All right, gentlemen.

Mr. Hassan: May we go over your listing now Your Honor?

Commonwealth's instructions to begin with: 1 was granted; 2 was granted in amended form; 3 was refused; 4 was granted; 5 was granted in amended form; 6 was granted; 7 was refused; 8 was refused; 9 was refused; 10, 11, and 12 were granted;

Defendant's instructions: A was withdrawn, B was granted; C was refused; D was granted; E was refused; F was refused; G was refused; H was refused; I and I-1 were refused; J was refused; K was withdrawn; L was granted; M withdrawn; N was granted in amended form; O was withdrawn; P refused; Q withdrawn; R was withdrawn, there was no R; S was granted; T was refused; U was granted; V was granted; W was refused.

The Court: If it will help, I will give you what seems to me to be the logical order in which I propose to read these as follows: 10; L; B; 11; 12; N; 6; G; S; 5; D; U; V; 4; 2; and 1.

Mr. Harrigan: And you have two oral instructions.

The Court: Actually three.

Mr. Harrigan: Three.

page 2687 } The Court: I propose to again state to the Jury a limiting instruction on evidence of prior disagreements between the defendant and the accused that it's admissible only to show intent motive and to cast sufficient light as they may find it casts upon the relationship between the parties;

Also an oral instruction on the definition of alibi;

And an oral instruction on the testimony of Walter Kadel as being received for the sole purpose of impeaching the testimony of Sam Ervin.

Mr. Harrigan: And not to prove the fact alleged therein.

The Court: Yes.

Mr. Harrigan: If they so believe. You're going to phrase it that way?

Could you tell us how you're going to phrase it?

The Court: I had intended to tell them that the testimony of the rebuttal of the last witness in the case, Detective Sergeant Walter Kadel, is to be considered by them only for the purpose of showing, if they believe it, a prior inconsistent statement by Sam Ervin and is admitted only

for the purpose of effecting the credibility of Sam Ervin's testimony, that whether or not it is to effect page 2688 } that credibility is for them to decide and that it is not to be received for the purpose of proving the truth of the statements contained therein.

Mr. Harrigan: Thank you.

The Court: Are you gentlemen ready for the Jury?

Mr. Harrigan: The alibi will be what, Your Honor? You said you were going to give an alibi—

The Court: (Interposing) Define in the Latin term meaning elsewhere and merely means it's a defense that the defendant was not at the place, at the scene of the crime but somewhere else.

Call the Jury.

May I see counsel and defendant at the bench?

My memory is not clear as to whether or not the defendant stated when the matter was discussed as to an instruction on second degree murder that he has had time to confer with counsel and was satisfied that that is what he wanted to do because on advice of his counsel and I want that clear in the record. Mr. Patler you stated that you did not desire the Jury to be instructed on second degree murder?

Defendant: I do not desire that sir. That's my wish.

The Court: Have you had an opportunity page 2689 } to talk to your attorneys about this?

Defendant: Yes sir.

The Court: Are you satisfied after your conversation with them that that is what you want?

Defendant: That's absolutely what I want, sir.

(Whereupon, the Jury was charged.)

(Whereupon, the Jury was retired to depage 2690 } liberate.)

Summation By Commonwealth Attorney

By Mr. Hassan:

Ladies and gentlemen, a long time has gone by since you took your oath to hear this case. A long tedious task for defense and the Commonwealth has perhaps urked you in its delays in your absence. All were essential, all were necessary.

The work of counsel in this type of case goes for long hours, beyond the courtroom appearances, and we want to

thank you, both the defense and the Commonwealth, for having borne with us. And I want to apologize to you before I might offend you. There are those who have taken offense at my voice and there are objections to it but they have arrived some forty years too late. I grew up and learned what little I know about public speaking in the days of Billy Sunday, no microphone, just large open spaces and perhaps I might get what might be referred to as bombast. I am not directing any blast or bombast at anyone, it's just something that forty years ago could have been changed but you can't teach an old dog new tricks.

I want you to remember those questions that were asked you before you were selected and the oath that page 2691 } you took because this is the most serious of all crimes for a jury to determine and the defendant, if you will recall, was told to stand so that you could look upon him because he had put himself upon the country, which country you are.

You are sole judges of the creditability of the witnesses, of the weight of the evidence, of the guilt or innocence of this defendant. This we have tried to do.

You will recall that his Honor had told you that this is first degree murder, murder by lying in wait, and it's either that or nothing.

The *corpus delicti* of this case was established by the first three witnesses and the three doctors.

You will recall Mr. Hancock, Mr. Ballard, and Mr. Blakeley heard shots and ran into the parking area.

They saw a man get out of a car. Mr. Ballard saw him spin and point to the roof, fall on the ground. And they heard running on the roof.

Then the doctors testified and told you that the fatal shot was fired from above, through the windshield, into the body of George Lincoln Rockwell.

There we have the *corpus delicti*. There we page 2692 } have the lying in wait, there we have the killing, and that's where we start.

And then we have flight. Then we have the evidence which comes along to establish the necessary element of the criminal agent, and you heard a series of witnesses. You heard Mrs. Burgess tell you how this man climbed down the Good Will Industry end of that building, how he came down under the wall and started over the wall and her dog chased him.

Then you had Mrs. Kilpatrick who told you how this man came from the wall, walked towards her car, passed her car,

stood behind it, and looked up in the parking area, came back and went up on the trash can and over the wall.

And then you had Mr. Stewart who came up as the man was going on the wall and went over the wall and the flight was in full session.

Then you had the testimony of the two barbers. Because of the man running on the roof, they went around the Seven Eleven end of the building and they saw no one. They went to Ninth Street, towards Liberty Street. Mr. Cummings went down Larrimore Street and Mr. Blakeley went down Ninth Street. Mr. Cummings saw a man running, Mrs. page 2693 } Rotchford and Rebecca Middleton were standing across the street at Mrs. Rotchford's home and saw a man come out between the houses.

Mrs. Thoburn was walking home from the park and the man came directly towards her and she saw him and then Mr. Hall.

In front of Mr. Hall's house he crossed the street to the egg truck. He stopped and he looked back. He went around the truck and he looked back again and he went on down the hill.

Then there was Mr. Mason, Mr. Cummings after him, and Warren Goodlett joined the chase with Mr. Cummings.

Then Mr. Collins in the house at the end of Liberty Street who heard the running but didn't see anybody go by his house and there we had the last of the witnesses who saw the flight. There we don't know which way he went until we find the coat and hat and there's a path that leads into the park.

And then next, in regards to that route, is the gun under the bridge in the creek that runs into Four Mile Run Creek over near the Westover Apartments.

Then the next we have is the apprehension.

page 2694 } But let us look at this flight. Let us look at this question of identification. What are the possibilities of identification of an individual in flight? The mind's eye and the eye of the body see only what they want to see.

You will recall Mr. Milleroy who was shown a picture that showed no identification. It was just a roof, a picture that was presented to you for general conditions. What did Mr. Milleroy see? He didn't see the general conditions of that roof, his eye was "There's a repair job I did in March, there's a repair job I did in February", and that's all he saw.

The great difficulty with all identification is in this type of case, in this day and age, is that before the opportunity safeguarded by the legal technicalities can be offered to a witness the newspapers or the T. V. has shown the picture of the defendant. Their general identification is always clouded by the facts. Are they identifying what they saw with the first picture they see or or they identifying the T. V. picture or the newspaper picture or the police picture with the individual instead of their memory of what they saw?

page 2695 } So you must look upon identification with a close scrutiny. The law allows a witness to say it resembles the defendant and we had many who said they first saw the man that they had seen running on T. V. or on the newspapers or in the newspapers. This was their first face-up with the defendant.

The strongest of all identifying witness—everyone of them had some type of identification which it is your duty to weigh.

The strongest of all of them was Mr. Hall who had two opportunities with that defendant, this defendant, as the Commonwealth looks at this case. He stopped and looked around the truck and stopped and looked up the street. He didn't believe he could identify him. He told the police he didn't believe he could identify him. He told the trooper he didn't believe he could identify him. But when that image in his eye met the image in the Washington Post on Sunday morning he said, "They've got the right man. That's the man I saw running." This is strong identification.

Now, what comes next? A description. It was not a police description. There was no police officer who saw the fleeing man. This was the description of a boy, Warren
page 2696 } Goodlett, which was passed on to the barber, Mr. Cummings, and passed on to the barber, Mr. Blakeley, and passed on as the boy's description to the police department. You heard the tape, you heard the activities that were caused, you heard the continual look-outs, you heard the continual alarms in the areas and the wide search that was going on.

Sergeant Kadel corrected the description after talking to Mr. Cummings and other witnesses at the scene and said, "Not necessarily Mexican", but the broadcasters in the police department kept going back to the original and even after apprehension they were still giving Warren Goodlett's description.

In the meantime, Inspector Cole had seen a man that

aroused his suspicion on the north side of Washington Boulevard with no coat as had originally been described, wiping his face with a towel.

He went around the block and when he came back that man was on the south side, the Bon Air side, of Washington Boulevard and when he came out onto Washington Boulevard that man went through between two houses and disappeared.

Two turns around. He never did produce
page 2697 { him again in the eyes of Inspector Cole but his lookout had alerted a myriad of police cars, of cars, who were circulating on all sides of Bon Air Park, in all of the areas.

Sergeant Moehler and Detective Davis saw the defendant waiting at the bus stop. If it hadn't been for Inspector Cole the defendant would have been on the bus that Detective Davis waved on and we wouldn't be here. And it wasn't until he was apprehended by Detective Davis that Inspector Cole knew who it was he had seen.

When he went to Harrison Street, that's when he identified the defendant who had refused to give his name and carried no identification.

Now, when they apprehended the defendant, what were the circumstantial evidence that became physical? That he was wearing wet shoes, wet pants, tar on the shoes, and wet from perspiration, as would be an individual in flight, as would be the criminal agent. For all along the chase, witness after witness said, "Wet half way up the leg." This was the man who came off the roof. This was the man who
page 2698 { was in from four to eight inches of water. This was the man that was in the water that Officer Taylor was in with the hip boots.

What happened to get him wet six inches above the knees? The next day under a bridge in Bon Air Park, in six inches of water, in the creek that runs into Four Mile Run, hid in between two rocks is the gun. The defendant was wet six inches above the knees. Did he kneel down to hide that gun? Did he get his pants wet six inches above the knee so that when he got to Washington Boulevard it had changed from half way up the leg? All of the circumstances, all of the reasonable hypotheses that can be drawn is that that happened.

There was a great deal of activity. There was a tremendous amount of police work. The defendant had to be transported from the place of his arrest. The detective, in

the excitement which you heard here, and the police officers and everyone on the scene were busy. A horrible crime of lying in wait had been committed. An assassination, one of the least solved crimes in history, and everybody was working so they took the defendant from Harrison Street to the scene. What did the defendant see? The detective didn't see anything who were in the car. They were questioned. They were on the scene. Momentarily, the defendant
page 2699 } said they stopped at the scene and he saw a man laying down on his side with his hands crossed. This may be true. There isn't a picture that shows any hands crossed.

You will recall that Mr. Hancock and Officer Kadel felt for a pulse. None of them could remember, who were asked or testified. To feel for the pulse they had to grab one hand or the other and one hand was in a cross position and the other may have been very well pulled away when looking for a pulse. But what did that mean? That means that when this defendant saw that body was when he went past Mrs. Kilpatrick's car and looked up there when the body was laying there. The only time it was on its side, maybe with the hands crossed, nobody has said. But when the defendant went back his hands had been pulled out, his pulse had been felt, and the coroner had put him on his back, pulled up his clothes, and removed a fragment from his chest, at or before, or at the same time that this defendant was apprehended on Washington Boulevard. If he saw that body, he saw it with one arm out as the picture shows, on his back, the clothes pulled up by the coroner and the fragment having been removed.

page 2700 } Then the defendant was taken down to police headquarters. He was taken down to be advised of his rights at one-thirty. At one-thirty the Violations Bureau closes for lunch and you have to wait until they return. So they had to wait because it was after one-thirty.

When he arrived at the courthouse and they had closed he waited and was taken to the Violations Bureau and there he was advised of his rights. Then he was taken back to the Detective Bureau. There he talked to Sergeant Peever and Detective Davis. He told about the argument. Told about the walk. Told about hitting the bushes. Told about going to get a bus to go to Westover to call his wife. He didn't tell why. He denied he went through the houses. He didn't tell them as he told you that he had had a little errand to

take care of. That he had gone between them. He didn't tell them this. He told you that.

He wanted counsel. He got counsel. Then he was charged, as soon as everybody involved in all of this work could handle it; some fifteen, thirty minutes, part of which time was spent in waiting for his wife who he
page 2701 } wanted to see. Then he was taken to jail and his clothes were taken from him.

Then what was done? Then a great search for evidence began. Didn't have the gun. Didn't have the coat. We had a suspicious man with sufficient evidence to hold him because among other things, in the pocket, in the billfold of the deceased man was a letter from this defendant, because it was known that he had separated from the American Nazi Party with a dismissal and difficulties had existed.

What did the investigation develop? Mrs. Freedman found the coat. Lt. Kadel took the coat. He didn't know it had four pockets. He searched two and it was sent to the F. B. I.

Samples of tar were taken because tar was on the shoes and Officer Roof who had been on the roof had tar on his shoes.

Gravel was taken. Soil was taken. Everything available on the known route was sent to the F. B. I.

The defendant's clothes were sent to the F. B. I. and their six experts examined them. They examined them to find some centilla of proof that it was this defendant or some centilla of proof that it was not this defendant.

page 2702 } The cartridge, the empty cartridge from the roof, the empty cartridge from the parking lot, the fragments in the body, the fragments in the automobile, all went to the F. B. I.

The next day the gun was found in a full, almost a full, long day search of Bon Air Park. This established the next step in the route towards the place of apprehension. This established the water six inches above the knee. This established the gun buried between two rocks. That went to the F. B. I.

Now, what did the F. B. I. do? They tested everything.

Let's start with the soil. The dirt and the tar. The F. B. I. experts said "Tar is tar". We can tell you that there is tar on the roof. There is tar on the shoes. But there is nothing in the tar that would allow us to tell you that the tar on the roof came from the shoes or that the tar on the shoes came from the roof, so it proves nothing. It doesn't prove he wasn't there and it doesn't prove he was there because the tar,

scientifically, could not be distinguished from any other tar.

The clothes were examined for hair and fibers.
page 2703 } None of the defendant's hair was found.

Nothing on the clothes, nothing on the hat, but neither was anybody else's hair. And a negative finding is not what has been called at times here exculpatory. If there was a hair of one other person, if there was a tie into someone else you would have exculpatory evidence. But you have no evidence from the F. B. I. that ties this coat, hat, or mask into anyone.

You have no evidence from the soil because there was insufficient impurities in any of the soil to classify it or to compare it. No possibility of a scientific determination, so that was negative.

The footprints. They were lifted because they might show something. But so many people had been on the roof that there was no possibility of identifying any shoes and they didn't find a sufficient number of prints of different kinds to even tie them into everybody who had been on the roof.

Mr. Milleroy, an engineer, Mr. Stevens, and the assailant within twenty-four hours were on the roof so we had nothing there.

There were no fingerprints. No fingerprints on that gun of this defendant and no fingerprints of anyone
page 2704 } else. Purely negative, but the effort was made because all defendants are innocent until proven guilty. Every effort must be made to make certain and positive that at some further time no newly discovered evidence will change the serious contemplation of this jury. That you will have had all of these opportunities and they were presented to you. That nothing that was exculpatory came from the examination of those experts. The only positive thing was the ballistics expert and he said exclusive of all other weapons, this weapon fired the shot that killed Lincoln Rockwell. It fired the shots that left the empty casing on the roof, that left the empty casings in the parking lot, that left the fragments spewed out throughout that car and throughout the body of Lincoln Rockwell.

Then came all of the investigation. That gun was owned by Robert Lloyd. It was purchased by Robert Lloyd's mother. It was a seven point six three Mauser and it was given to Robert Lloyd. He brought it here with other guns and he said he loaned it to the defendant to be used by him as an officer of the American Nazi Party while he was living at and working for the American Nazi Party at 928 North Randolph Street.

page 2705 } The last time Mr. Lloyd saw it was when some friend of the American Nazi Party wanted to purchase it and Patler was present and they discussed price and the man wouldn't pay the price.

The next time Lloyd said he asked for the gun it was missing and he never saw it again.

After that time it was seen by Mr. Pace at 928 Randolph Street and Mr. Pace's belongings and Mr. Patler's belongings were taken to Spotsylvania where they were separated and he saw that gun again many times after it was reported missing.

Now, Mr. Patler denies he ever had that gun. Mr. Miller, the man who works on the farm, said that he was painting the fence in July of 1967 and that Patler was over in the meadow target shooting. And the detectives left Tom Miller and went to the spot he had indicated. Found the tree. Found the empty cartridge cases. Removed the slugs from the tree. And brought back these cartridge cases and slugs which were put there, according to Tom Miller, in July of 1967 and gave them to the F. B. I. expert and, exclusive of all other weapons, these slugs and these casings were fired from this seven point six three Mauser, model page 2706 } number nine eight one one. This is pretty conclusive evidence of possession and firing of the fatal gun in July of 1967, one month or more from the date of the killing.

We then move on and see what this whole picture of circumstances begins to look like. We have an investigation. Two private detectives set up a cross-country time trial run, checked out the question of whether or not, from the time of the reporting of this murder to the time of apprehension it was reasonably possible that the man in flight could be the defendant.

The boys ran it in ten minutes but they didn't run from up on the roof. They didn't climb down off the roof. They didn't climb the wall where the dog chased them. They didn't climb out in the parking lot and look back up. They didn't go back and climb over the wall. They didn't know when a fleeing man ran or when the fleeing man walked. When they got to Larimore and Liberty Street, when they got to Mr. Hall's house they didn't stop and look. When they got to Liberty Street they didn't know which way he had gone. They didn't go to the bush and put a hat and coat under it. They page 2707 } went straight ahead to where Mr. Colon said the fleeing man did nothing and then they went across that park someday and got to that bridge.

They didn't get down under the bridge and move any rocks and come back up. And they went right straight across the ball field into the Westover Apartments and out on to Washington Boulevard.

Well now, there are many routes through Bon Air Park. The aerial photograph shows you. The map shows you Bon Air Park. From that bridge up there is a long gully up to Kensington Street and you get to Kensington and you're many blocks out of sight that way. And there you can go down by St. Michaels Church, Ivanhoe Street and Washington Boulevard. You can go straight ahead. You can go up the hill. You can go on off and go on down through the apartments. You can go any number of ways. Would the time involved in following this flight and running every possible route be *inconsistent* with the some twenty-two minutes at the outside of flight to apprehension to visibility by Inspector Cole? Not at all. These boys weren't running away from having shot a gun. They weren't trying not to be seen and they weren't running in August through the

page 2708 } undergrowth of Bon Air Park. They were running in the bare limbs of bushes, no undergrowth, no shrubbery, nothing to duplicate it, the condition, mental condition or physical condition of the actual flight.

Now, what is next? We had these detectives running another test. There is no question but what this defendant got up on the twenty-fifth of August. There is no question but he and his wife did make a trip and did make some stops. The question is time. The question is time; the time of beginning, time of the accomplishment of the individual tasks, time of completion and time of the defendant's departure in a huff. These are important questions.

How long did he spend at the gas station? When they reconstructed they had to guess. Nobody knew. The gas station man didn't know what time they were there, he couldn't tell. Nobody saw them at the post office and they obtained ten letters. The woman in the bank couldn't say what time. It could have been before the coffee break or it could have been after the coffee break, she didn't know. She didn't remember the defendant. Her records didn't help too much because one transaction could have had five checks in the very

page 2709 } first five minutes and she didn't know, she couldn't remember. No doubt he went to the bank but we—there is no proof of time.

The boy from the post office with the receipt, who wrote it himself, didn't remember who he gave it to let alone what time. It could have been any time during the day.

There was no time established. The woman in the paper store said eleven to eleven-fifteen on direct examination and it could have been ten-forty-five on cross examination. There is nothing definite as to time even at the paper store.

They came back. They went to Clarendon to the Safeway, got some chicken, back to the house and he carried a package downstairs.

On the night after the event, to Walter Kadel, when time and reconstruction were not under consideration, Sam Ervin said they had a fight and he left about ten minutes past eleven. This was before there was any thinking about time. This was spontaneous. This was not trying to reconstruct. Just time to begin with. It's *uncolloberated* by anybody except Mrs. Patler and except Mr. Patler.

Now, if this were so, that he left at ten past page 2710 } eleven or even earlier, there is no question but what he could have been to that shopping center before the killing. He said that he went to Fairfax Drive and up Fairfax Drive and to King Boulevard. Fairfax Drive up to the dead end, over the thirty foot wooden bridge and under the railroad. Well, he could have gone over to the Safeway again on foot and got a bus. He could have got a bus on Lee Highway or he could have walked from the time schedule set up by Sam Ervin, then minutes past eleven. And the strange thing about it all is when I asked him to go to that blown up picture and show us the route when he got under the railroad bridge, what did he say? "This is where I turned left, where you turn left to go out the Wilson Boulevard and on up." He didn't say where he went. He said, "This is the way you turn left to go out to Wilson Boulevard and on up." Then he got back on track and up George Mason Drive and on up to Wilson Boulevard. But when he reached the bridge in his mind he turned left to Wilson Boulevard.

Now, there was never any evidence as to how a man got on that roof. He might well have got up on the roof on the Seven Eleven side. Lieutenant Fulchiman did page 2711 } and their detective. The two barbers said they went around and saw no one.

But the tar, the way it is bent from the weight of something on it and Mrs. Burgess and Mrs. Kilpatrick and Mr. Stewart saw the man coming down. There is great emphasis on the Seven Eleven side but no evidence of any kind.

Now, while it is not necessary to prove motive, the whole history of this young man's connection with the right wing movement has been a historic volcanic buildup to an explosion.

When he originally joined, he was there a short time and in an interrevolution left with Dan Burrows in a dispute to go to New York and set up an organization which published a magazine called "Kill Magazine", summarizing the whole philosophy of that movement, in my opinion. That didn't go so good. He came on back, all was forgiven. He rejoined. He reactivated the American Nazi Party and then you had a continual buildup of animosity, threats of exposure, charges of lies, charges of dishonesty, abrupt writings on letters which the defendant characterized as vile attacks and asked the commander to destroy them, turn them over or destroy them. But all wasn't forgiven even then. No

page 2712 } sooner had Exhibit 5G been written, did the volcano begin to build again and again until there was a dismissal from the party on April 4th. A complete repeat and repeat, complete animosity, a *violet* argument it was described, and he was out. He would have you believe he was out to further his education, to take care of his family responsibilities but what did he do? He organized a new movement just as before, just as he had been engaged in a violent struggle and he was dedicated to the principles of the right wing movement of which he believed and he was being hampered because of the charges of Rockwell.

He would have you believe it was a one man organization, a frolic of Chris Bailey—I don't know what his first name is, Bailey and Patler, to do something against Stokely Carmichael or pass out something at the White House. This was in place, but as late as August he was opening a mail box in Chicago for this movement. He was setting up a white army of liberation of a select few of ex-Nazis and he had a complete organizational chart. He's back in the same old pattern. What did he tell Vinjeonich? He admitted he saw him

twice in June when Vinjeonich was trying to
page 2713 } get him to come back into the American Nazi

Party. He said "No, George Lincoln Rockwell is an evil genius, he's got to be stopped. We're going to stop him." When Chris Vinjeonich asked him if he was back with his old friends from New York he said "Yes, and we're going to stop him." He tried to discredit Chris Vinjeonich. He called in Carl Alan who identified Chris Vinjeonich's voice as Vinjeonich was alleged to have talked to Davis and Davis said he didn't call Vinjeonich. Whoever called said they were Vinjeonich and then they had a lot of concoction about Vinjeonich burning an automobile or something and shooting at something and missing a wall. It wasn't a barn door they missed, it was a wall. The police investigated and dropped it.

The car was unlocked and burned in the back. What is it? The man in ten twenty-one uses the parking space at ten nineteen and Alan doesn't even have a car. And he said it could have been Davis in a fight in the neighborhood over who was going to park in an alley on King Street.

This whole case on the defense side is a matter of the motive versus built up motive which is unnecessary in this case to the point where there is not one *centilla* of a doubt of existence of animosity over a long period of page 2714 } time. The existence of political attainment of desires and ideals were hampered by the continued existence of George Lincoln Rockwell and in the course all of this after April is continuously built up, all of the witnesses of the defense on that score.

Now, what do we have there? We have Frank Smith. Frank Smith built everything up and then knocked everything down. But Frank Smith is the man that Mr. Hartman said Commander Rockwell said the assailant in June looked like. It looked like the Holy Father. It was neither father or holy but expected to be a father right quick and holy because he was full of bullet holes in a gang fight in Massachusetts.

Mr. Harrigan: I object to that. There's no evidence of that and I move that it be stricken.

Mr. Hassan: I asked him specifically, Your Honor, whether or not it was a part of these gang wars we had heard about going on in the greater Boston area for several years and he said yes that was and I asked was that political.

The Court: Was that the point you object to?

Mr. Harrigan: Yes.

page 2715 } The Court: That is overruled. He said it looked like it. He didn't say it looked like the Holy Father. He said it was just like the Holy Father.

Mr. Hassan: Your recollection is right.

I also told you I was Billy Sunday's boy.

One of the strange things about this case is, when I was asking about "bitterness" but on redirect he knew how to say no to the question "Were you violently bitter" when Mr. Harrigan asked Mr. Patler that but he couldn't answer my question on whether or not there was bitterness. He admitted the "liar" and the "dishonesty" and repeated the charges. The movement, while unnecessary, existed without a *centilla* of reasonable doubt.

We now have the *corpus delicti*, the criminal agent in flight. Those are two of the essential elements. We now have

movement. We now have opportunity and we will see that we also have preparation.

What about preparation? Target shooting in Highland County with the very gun in preparation. But stronger than that was the testimony yesterday afternoon of Patler's good friend, the non-baking pie baker, Mrs. Forsythe. What did she say? That her bank book said the page 2716 } twenty-fourth and the weather was clear. She came out of the bank, the west side of the building, west of the shopping center and talked to Patler. He said he had been to Seven Corners shopping. He didn't mention a crib. He didn't mention a Goodwill Store and he was not in the shopping center. Where was he? You remember when Mr. Harrigan had Paul Sale draw that red line to show where the driveway to the barracks went and he drew it right across the street from the west end of that building. He was standing there two days before. That is preparation. If that isn't trying to see what's going on, that isn't something towards proving preparation, then I'm sadly mistaken. He admits he was there before that at the Goodwill store and saw it but he didn't say it was west of the shopping center. He didn't say he had been at Seven Corners when he told us the story from the stand. There seems to be a lot of preparation, a lot of movement.

Now, circumstantial evidence is a matter which the judge has given you several instructions on. To me it's the strongest of all cases because the eyeballing of a crime is much less reliable. The eye sees only what it wants to see. An eyewitness of the man shooting that gun would page 2717 } not be as conclusive as the evidence that circumstances have woven in this case. A man on the roof shoots and kills George Lincoln Rockwell. He is in flight and he is described as dark. He is described to a tee and he is said to resemble, by many witnesses, John Patler. Where did the dark complexion come from? The panty stocking. There's a Mexican complexion if there ever was one. That was in the pocket of the coat. He's dark anyway and this would have made him darker. He's wet halfway up, from a roof that holds four to eight inches of water. A coat said to be his coat, positive absolutely by Mr. Pace, and by other witnesses said to resemble the coat of Patler. What did Patler say about it? Nothing on direct examination testimony and I can only cross-examine within the scope of direct testimony. I cannot call a defendant. I cannot make him my witness. I cannot compel him to give evidence against himself.

Mr. Harrigan: I object.

Mr. Hassan: But he said nothing about that coat until redirect examination.

The Court: What is the basis of your objection?

Mr. Harrigan: I withdraw it. I'll argue it.
page 2718 } Mr. Hassan: What happened? They introduced three coats. He answered the question that he had no other coat. Mr. Harrigan to your presence, in your presence walked to the table, took this coat out and looked at it and put it back in and then asked him something about the coat but it wasn't did he ever own that coat. It wasn't, was it that coat. He never asked him to try it on. He never denied it was his. I asked him did he leave any clothes at Nazi headquarters, did he fail to get back any clothes. No he said he hadn't gotten every thing back. There was nothing done so that any cross examination, so that any of your questions or mine could be answered about that coat.

He never said anything about Highland Farm. He never said anything about tar. He never said anything about water. He tried to but not on his direct testimony. There's no explanation and no opportunity to seek it in cross examination.

Now, ladies and gentlemen of the jury, I've talked too long. This is not the case of George Lincoln Rockwell. It's immaterial who the dead man is or who the dead man was. This is a case of the *Commonwealth of Virginia* against John Patler for the crime of killing by lying
page 2719 } in wait. The body of the deceased is evidence but it's not his case, it's my case, it's your case, it's their case, it's our community's case. Can any community tolerate ambush slaying, lying in wait and assassinations. It's often the harrowed duty of the weighing of the test of the evidence and determining the guilt or innocence of this defendant. This is your awesome task and if you do determine him guilty you are limited in the penalty you can give. The legislature has determined the framework within which this crime can be penalized. Not less than twenty years, any number of years or life or the electric chair.

I ask you if you determine John Patler guilty of the crime of lying in wait, and assassination, of killing from ambush, give him the chair.

Mr. Morris: May we have a short recess?

The Court: Go ahead Mr. Harrigan.

Ready, Mr. Harrigan?

Mr. Harrigan: Ready, Your Honor.

The Court: Go ahead.

Mr. Harrigan: Ladies and gentlemen of the jury, as you all know, now is the time when we sum up. This is going to be the last opportunity that we get to talk page 2720 } to you about this case and about your position in this case.

Now, Mr. Hassan in his opening statement and in his closing statement alleged he was going to prove certain things.

In his closing statement he talked about the shooting of George Lincoln Rockwell, flight in his evidence, and that you have to decide on that evidence.

Now, the court has instructed you as to the rules you can go by in deciding this evidence and there isn't any question in anybody's mind as to who had the burden of proof in this case, and that's the Commonwealth.

They've instructed you on that and they've instructed you on what type of a burden that is. That's the burden before you can find this man guilty and give him the electric chair, as Mr. Hassan asked you.

They have put proof on to convince you beyond all reasonable doubt.

There's a presumption that they instruct you on. There's a presumption of innocence. You heard that and you read it. Then it comes down to whether they put this kind of proof on.

Now, the proof that they put on is one hundred percent circumstantial. page 2721 }

The court has instructed you as to how you should scan circumstantial evidence, that you have to scan it with great care and caution. And unless the circumstantial proof is of sufficient a character and tendency to produce, in the minds of the jury, a moral conviction of the guilt of the defendant, beyond all reasonable doubt, you must find the defendant not guilty.

In this connection the court furnished instructions to you that where the Commonwealth undertakes to prove the guilt of the defendant by circumstantial evidence, it must not only prove the circumstances relied upon but it must overcome the presumption of innocence of the defendant and establish his guilt beyond a reasonable doubt. All necessary circumstances must be proved and must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstantial proof create a suspicion of guilt, however

strong, even a probability of guilt. But they must exclude every reasonable hypothesis except that of guilt.

Now, there are certain facts in this case that page 2722 { Mr. Hassan didn't even touch on and they are certain facts which there is no dispute about at all. And that's the framework where we have to start working.

Which facts aren't undisputed? Now, there's no question about the fact that on August 25, George Lincoln Rockwell was across the street in the barracks that morning. Mr. Koehl testified about that. He took the car out. He stopped at a Mr. Neyles' house for one reason or another and went to a post office.

Mr. Neyles wasn't here, he didn't testify. As a matter of fact, the testimony was that Mr. Neyles had left town. But there was no question about it. He got back there at eleven-thirty or thereabouts.

He talked to Mr. Rockwell at about a quarter of twelve, at about ten minutes of twelve Rockwell left that barracks to go to do his laundry.

There were three other people in the barracks that day. They might have heard, they might not, but there's no question that at ten minutes to twelve there were four people in this whole world who knew where Rockwell was going and when he was going.

They introduced into evidence the coroner's report. On that report it showed that at exactly eleven page 2723 { fifty-eight, eight minutes later, George Lincoln Rockwell was shot dead in that shopping center across the street. Eight minutes. Now they're trying to say that Patler knew that he was going to be there. He was down there, he knew all about that and he was on the roof waiting for him.

What does the evidence show? What's happened in this case? Mr. Rockwell was shot. You heard the police tapes. They called the police. Sergeant Kadel testified. He didn't even get down there until almost ten after twelve. Inspector Cole didn't even leave the police station until ten after twelve that day to head towards the scene. Nobody was even around for ten or twelve minutes.

Cole is driving down Washington Boulevard and he sees a man in a yellow shirt, pants, shoes on with a great big towel around his neck. He goes right by him. He says he's wiping his face. He wasn't running. He was right out in the open coming from the opposite direction over to, and across, Washington Boulevard.

He said he went around the block. He circled around the block. When he came around the block he saw
page 2724 } this man and he saw the man cut through what he believed was back between two homes and they were looking for somebody, so this created a suspicion in Cole's mind.

Now, he said he was not more than fifteen feet away when this man turned and ran between these houses, if he ran between the houses. Now, that's the area where you have the house and that little patch of wood is right behind the houses. He said he didn't recognize who it was.

He's known John Patler, and he's fifteen feet away and he said, I didn't know who it was, so if I had known I would have put it on the air. But that's not proof somebody ran from him. So as a result of his call Patler was stopped just a couple of minutes later on the same highway at a bus stop waiting for a bus, by Detective Davis.

Now, what's the description that everybody had out? Mexican or Spanish descent, wearing a long dark coat. Mr. Stewart said a blue serge suit, yellow socks. That's the description that everybody was looking for.

After they stopped Patler, Cole came back to see who they had stopped and when he got back there
page 2725 } he was well aware that Rockwell had been shot.

He saw Patler, he knew Patler was an ex-Nazi member and that was good enough for him. At that point, maybe it would have been good enough for me or any police officer to hold him, anyway, and that's exactly what they did, they held him.

But then there comes a time when you've got to get some proof. You can stop a man and arrest them and bring them to the police station but sooner or later you're going to have to put something up in the courtroom. So they tried to get their proof. They sent their police officers down Larrimore and Liberty Streets and they go all up and down the street and ask, "Did you see a man run" and so on and so forth. And about a dozen witnesses testified, "I saw somebody run. He had a felt hat." He didn't have a felt hat. Not one of them said there was a towel. Nobody said there was a big white towel about his neck.

Then you have three witnesses who came in and said Patler is similar to the guy. And Mr. Hassan said it's probably as well, anybody that is an eye witness where you have
page 2726 } a situation where you have the T. V. cameras from the shopping center and where you have

the front, with his picture on it, where you have the article of how they found him in there and Mr. Hall said he read the Post and he read the Star as to the article where you have the route, where they alleged this individual ran with X-marks where they got Patler and where they got the shopping center, how do you know what they're identifying? How do you know what influence this had? It's got to have some influence on everybody. One witness was asked if she knew if an eye witness identification is next to worthless. So they decided, we've got to get some concrete circumstantial evidence and that's what they started to do.

They went up to the roof and they had an officer up there so nobody else could get up there and they brought the identification man up there to take samples and they did.

They went over the roof and found footprints going from the back of the building to the front of the building with little cross marks. They carefully lifted both of those prints. They sent them to the F. B. I. They took Patler's shoes and sent them down there to compare them.

Then they had the man dust for fingerprints
page 2727 } up there which is reasonable and they took
paint scrapings from where the shell was found
and took paint scrapings from over next to the wall where
this man went over the side.

They had a theory at that point. Whoever it was ran across the roof and went down that side and ran down Liberty Street. That's the theory they were working on. That's all they had to prove that.

They took soil samples from the roof. They said there was gravel all over the roof up there and they took soil samples from down below, from all over the wall, from seventeen different places. From different places all along this route that they were going to prove this man ran and they had Patler's clothing to prove it.

So after they took the soil samples and sent them to the F. B. I., you heard the man testify who came on, "I examined the soil in the shoes and I examined the seventeen samples and didn't even match one of them."

The law of averages would make it seem that it would match at least one. There was no little stones from the roof
on any of that tar on his shoes. There was
page 2728 } nothing.

Then you have all the witnesses that saw this fleeing figure and everybody knows how many figures

were running around there. You know the two barbers were running after somebody. You know this other kid was running after somebody. You know this other kid was running along with the barbers. There's three that's been running down there and this other boy that was on the corner. He was down in the woods with his dog and the Lord knows how many more people were running around there.

So the soil and all, nothing matches there.

Now that's one fact in their chain of circumstances that absolutely is inconsistent with guilt. It's almost inconceivable that something wouldn't match. So then they collected the shoes and clothes for the paint and they get the clothes for the tar. Nothing, no paint from the side, no paint from where this man went down or anything. So there's another fact that's inconsistent with their theory and that's what they had. They had a theory and that's what it turned out to be, a theory.

So then you heard all the witnesses testify that saw this, and there was one significant point in every page 2729 } single one of them. They saw him with a hat on. They saw him with the hat on and now Mr. Hassan suggests that this man had this stocking over his face and that did away with his theory that there was nobody to recognize him, nobody saw him. Mr. Stewart said, "I saw him." "He put both hands on the wall and went over the wall."

Now, where's this gun? The gun has got to be on this pocket or jacket or something. It's got to be somewhere on him. It's got to be wrapped in this big towel or hid someplace, if this towel was there. But it's got to be on this person somewhere in contact with him but they examined all of Patler's clothes and the clothes they found on him. They examined the coat. They say there were no powder burns or stains or oil to show this gun was connected up with it and the F. B. I. man went over it with a microscope. And what did he come up with? There's nothing on the man's shirt, there's nothing at all to connect this gun up with Patler at all, as far as powder burns or powder residue, nothing. Now, there's another fact that's almost essential in this chain of circumstances. It's almost essential to convict and it shows beyond all reasonable doubt page 2730 } that this gun was not even around his clothes or anywhere else. You have a recently fired weapon, an automatic, where it opens up and the bullet comes out and the powder comes out and it would seem reasonable

that if you put this in your pants somewhere you're going to get something on you.

So then they take Patler to the police station and when he's down there, what do they do? They tell him what he's charged with? No, they don't tell him that, they shut off the radio. They drive him up to the scene. Here's the man under arrest. When he was arrested he's got a man with a shotgun behind him. All officers corner him, they throw him in the car, drive him someplace and he makes a big bout out of the fact—and do you remember what he said—he said he saw a man on the ground with his hands folded. But whether his hands were folded or not folded I don't know. It could very well be. He's not denied that they weren't. What is he saying? "Am I suppose to have done that?" or whatever it is they said. So they take him to the police station and get him down there, do they give him a parafin tests to see if he fired a gun? No, page 2731 } they didn't do anything like that because it might not show up anything.

Did they tell him what he's charged with? No, they don't even tell him that. They take him over there and finally two or three hours later they finally get a warrant out on him. They put him in jail and that's where he's been ever since.

Now, at that point they still had their theory that there is a fleeing man and this man was involved. They haven't got a scrap of evidence anywhere to prove it.

Now, all six F. B. I., five of them come in and testified. The clothes. The fabric man, nothing. Then the footprint man came in, "I checked these shoes against the footprints lifted off the roof and definitely they do not match."

Then the Commonwealth tried to put some evidence on to sort of take the sting out of that, so they put a couple of workmen on the stand and they said, "Well, we were up there a couple of days before that or the day before, I forget which." They were there the same day. Now, I think they knew who the workmen were. All they had to do was ask them, what shoes were you wearing up there and then all they had to do was let us use those shoes and page 2732 } compare those against these prints and see if you are the guy that started walking here and say, now, let's check these prints. I don't know if they did that. They're trying to imply those are the prints. So the obvious inference there would have been very well the prints of whoever else was up there, whoever else was on that roof and whoever else shot George Lincoln Rockwell.

Then we have the evidence of the detective that Patler was wet right above the knee, a nice straight line, straight line above the knee. There isn't anyway to disprove that. They said it's true and there's nothing I can do about it, except call your attention to inconsistent statements they made. We had one on there who said wet about the knees. Mr. Hassan said that you couldn't get that wet above the knees. All you have to do is look at the pictures. The roof is flat, you may get some water but not that kind of water on the roof, so the only way you do get that kind of water—according to the defendant, he's being pursued through the park. He has to hide the gun and he'd have you believe he goes down, kneels down in the water so he can put a gun down there, that's how he gets his pants wet.
page 2733 } Now, look at the picture, 45U.

Now, here's the officer pointing to the spot where this gun was found and there's the bridge and he's pointing down. Now, under Mr. Hassan's theory, whoever this man was he's being pursued. He's going to stop with all these bushes around that stream, go down there and kneel in the water and put a gun between two rocks where somebody would find it the next day? It's absurd. If a man's on the run, he's going to get rid of that gun, assuming that's the way it happened. He's going to go over that bridge and let it go, throw it and keep right on moving. Who's going to get down in the water and get your pants wet?

Now, the gun wasn't found until the next day, late in the afternoon. So as a practical matter, that gun could have been put there anytime. It could have been put there Friday night, early Saturday morning. The picture of the roof, you all read the papers of where everything was taking place. It was in the newspaper, all you had to do was look at it. You could tell exactly where everything was and where the roof was. Anybody could have put that gun down there.

Then we come to the hat and the coat. Now,
page 2734 } they examined the hat and the coat and I think the coat is particularly significant because the hat nobody ever said anything about. I don't think it's even in evidence, anymore, but we have the coat. They examined the coat and they don't find anything on it. No connection with roof, no connection with the gun, and no hair from the defendant and they say no hair from anybody else. There's nothing on it, not a laundry mark on it, not an initial on it, there's nothing on it at all. Now, we introduced into evidence Patler's coat and I might say the testimony was,

I think, that it was a thirty-six. We introduced Patler's coat he had for several years. And everyone of his coats had been initialed in it and this is a theory. It's got his initials in this one, he's got his initials in this one. So all of his coats has initials in them, but they have to hook up the coat to Patler. They haven't hooked up the clothes with the roof. They haven't hooked the shoes up with the roof and that was the closest thing they came to when they said tar is tar and that's about zero, is what's that worth. So they have to hook it up someway, somehow, so they hook it up, or try to.

page 2735 } The gun. How did they try to hook that up? They get a Mr. Lloyd. Now, Mr. Lloyd who is the acknowledged owner of the gun. Mr. Lloyd has been with Nazi Party a number of years. Mr. Lloyd we contend was dismissed from the party and Mr. Lloyd, who Mr. Koehl contends was not really dismissed, he just wasn't active. Mr. Lloyd who at seventeen was committed by his own mother to an institution. She said for four or five days under psychiatric care. So a few months after he got out of there they bought him that gun and I think that's his problem. Mr. Lloyd after immediately getting out of high school joined the Nazi Party and joined a whole slue of other things. He brought a lot of other guns up here with him, all of them German Lugers. Now, whether or not the police find the gun they have a list from the Nazi Party anyway as to owns the gun, so Mr. Lloyd is well aware that Mr. Patler has been picked up. He is well aware of the animosity that existed between Pater and the people at the Nazi Party because every time somebody leaves there's letters back and forth about what terrible people these people are and so Mr. Lloyd was asked, is this your gun and he knows it, so

it's easy to prove and he said, "Oh, yes it is
page 2736 } and I loaned it to Patler back in 1964 and I haven't seen it since." What did they expect him to say? If he denied it they had the receipt. He said he loaned it to Patler and said he hadn't seen it since. And he said somebody wanted to buy it. Where is that somebody? Where is he? Why, they have the F. B. I. They have the Arlington Police. They have all the law enforcements facilities in the world to bring anybody from anywhere, but where is he? The same Mr. Lloyd who was the reliable informer who told them to search Patler's home, go up there and look for murder plans, go up to look up a cap and ball pistol and go up to his home and you're going to find every evi-

dence. According to Mr. Crickenberger, I asked him where he got the information and he said reliable informer. And I asked him was it Robert Lloyd and he said yes. This is the same Robert Lloyd. Now, Mr. Hughes, they tried to allege that Mr. Patler stole this other cap and ball gun, so why wouldn't it be reasonable that he took this seven point six three, also. Where was Mr. Hughes? He doesn't have the money to fly people in from all over the country. The best we had was a letter from Hughes which wasn't introduced into evidence, but we contend, on page 2737 } that point of the cap and ball pistol that it was a deliberate out and out lie on the part of Lloyd. That after this shooting took place and Lloyd had nothing to do with the Party for a long time, suddenly he's back up there, he's living there, He's a good friend of Matt Koehl's, he's next in command, now. No questions how the witnesses from the Nazi Party feel about John Patler. They're out to hang him anyway they can because if they hang him that takes care of the matter then. It's all over then, everybody's going to forget about it. There won't be anymore investigation and nobody cares after they get Patler so they bring—after all, the F. B. I.'s testimony shows absolutely nothing at all. If Patler wasn't there then the police have to resort to something else. They have to get some evidence from somewhere else and the only place left is the Nazi Party.

So you have Lloyd which we already discussed and then bringing in two or three guys about the coat and they said, yes, I remember that coat, that's just like the one Patler used to wear. That's the same coat all right or something to that effect. I haven't seen it for a couple of years, or a year, or a year and a half but I'd recognize page 2738 } it anywhere and the expect you to believe that kind of testimony beyond all reasonable doubt. And then use that to base an inference on that it was the coat and therefore he must have had it on August 25, which is really stretching the imagination. They're asking to put this man in the electric chair based on that type of tenuous reasoning.

Now, aside from what they have, or think they have, they have a theory, that's all they've proven. They've shown you a theory and haven't put any proof on to back it up. Aside from all of that though, what did the defense put on? Defense put on certain exhibits to show John Pater was not there that day. We contend two things, that their evidence—

if we didn't put on any evidence, their evidence wasn't strong enough to convict anybody, but we decided to put on all we had so we put on our exhibits.

Now, they're asking you to find that his man was lying in wait for a man that he didn't even know was going to be there and was only there eight minutes. Now, that morning we showed you this. We put on a check from the bank which was signed with John Patler's signature and you had a great big blowup of his signature and so you shouldn't have any difficulty. It's testified it was his page 2739 } signature and dated. And as they said, it shows the number in the bank where it was cashed. There's no question about it, he was in the bank that day. He wasn't there in the afternoon because he was in the jailhouse but the teller didn't remember.

Now, she brought in a tape which would indicate this was the sixth check cashed out of the twenty-three which obviously means it was cashed that morning sometime. But they stop on that and say, well that's a circumstance, she didn't remember him. Then they go on to the gas station receipt which is obviously a purchase the same day by Alice Patler, on Lee Highway after they left their home, the first stop they made.

The postmaster testified they had a box in Falls Church and they go there every day to pick up their mail because of the mail-order business. And the post office clerk said, "Yes, that's my signature, I wrote that. Ordinarily the customer writes it himself." But they say these people don't remember him being in there. Well, there was one way they could have checked real fast. Instead of turning off the radio and instead of not charging him with the felony and not telling him anything about it and keeping page 2740 } him upstairs and put guards in the room, why didn't they go out and ask where these places were and tell him what he was charged with, "Where were you at eleven-thirty?" and go out and check it?

They couldn't do that because if you do that then you're liable to come up with a witness and say he was there and then where would their case be. But there is one witness and they knew him before. She knew him and Sam Ervin's son-in-law and that was Mrs. Luba. She's not a friend of his, she's not a friend of the Nazi Party, she's not a friend of Mr. Hassan, she's not a friend of the police, she's not a friend of anybody, she's just a storekeeper in Arlington Paper Supply and she said she recognized him being in there.

Her father left that morning because he had to get some supplies. He remembers what time it was. There wasn't any customers in the shop and to the best of her recollection some customers came in around eleven o'clock. Mr. Patler walked in. Now, here's a man, fifty-eight minutes later, who is going to be on the roof of the shopping center waiting for a man to come across the street.

page 2741 } He said he was there and he had to wait five minutes. Now, I say if you're going to shoot somebody—all in all, she counted out the envelopes for him, she made out the receipt, she signed it in her own handwriting and he walked out of the store, she says, about eleven-fifty. And he said he went, started towards home. He had to go to the Safeway and pick up a chicken and according to Mr. Ervin, when she came home he had the chicken or his wife did and she put it in the pan and he carried out the box of groceries and there was some dispute and he stormed out of the house. And when he stormed out he had the towel in his hand.

Now, the testimony was that, that was about a quarter of twelve and you can't get it any closer than that because if I asked you where you were at a quarter of twelve on August 25 I don't think you could tell me either. You can't go around documenting an alibi and have everybody sign receipts and say, sign the time because I may get picked up for murder later on today. But the most we can do is show you where we've been, show you what we've got to show we were there and that's it, that's what we've got.

Then we have his wife's testimony. She was page 2742 } with him the whole time and she testified where they went and what they did and what time they got home. She wasn't sure how long, how many minutes in each shop but how long does it take you to find a parking place, how long does it take to park a car. Who knows that kind of stuff? But she knows what time she left that morning because Sam got back from his errand, she knows when she left and what time she got back. It was a little before a quarter of twelve.

Then we have Mr. Ervin who saw him come back. He knows he was there and he knows he was with her all morning. Then after he leaves the house, takes off and he's walking.

There's plenty of evidence in this case, even Mrs. Forsythe, as long as three or four years ago when he used to help her push her cart, she used to offer to give him rides. She even testified from the stand that sometimes he'd take a ride,

sometimes he wouldn't. John liked to walk a lot. Sometimes he'd rather walk. Now, the testimony is, he doesn't have a car, he doesn't drive one. He knows how to drive one, almost everybody does but that day when he left the house, he doesn't have a car.

page 2743 } Now, we tried to establish how long it took to make that run to these various locations, stopping in the same places, and so forth. And we had two investigators get in the car, the same car with Mrs. Patler and started out the same time and see how it came out. And they left at ten o'clock and there wasn't any big interval here. Ten-oh-three to the Scott gas station, ten-oh-six, three minutes, to get the gas and they left the station and headed for Falls Church. Ten-seventeen, they got to Falls Church. They went in the post office, came back out, opened the mail. Ten-twenty-five, they left ten-thirty-nine. They got back on Lee Highway for her to pick up the check so she could go to Fidelity Bank. Mr. Ervin went over to the Seven Eleven and got something. That took about four minutes. They arrived at the bank at ten-forty-five. He entered the bank, he was in the bank two minutes. That's not unreasonable and he returned to the car. They go over to the post office, pull in the parking lot, get out, go in the post office at ten-fifty-seven. They're in there two minutes and back out. Ten-fifty-nine, they headed down to Arlington Paper

Company where Mrs. Luba said she saw him
page 2744 } about eleven o'clock. What time did they get there, eleven-oh-seven. They're in there seven minutes on this test run and they leave at eleven-fourteen. Mrs. Luba said they were there ten or fifteen minutes and they're back home after they go to the Safeway, and so forth.

Back home at eleven-forty-one. Our position in this case comes right down to this. He's back home at eleven-forty-one, he doesn't even know where George Lincoln Rockwell is. Mr. Hassan said to you, maybe he took a bus, maybe he walked, maybe he did this and maybe he did that and he's asking you to pull all those maybes together and reach a conclusion, beyond all reasonable doubt, that this man knew Rockwell was going to be there and that he had time to get there. Then he's asking you to put him in the electric chair, based on that kind of evidence.

Now, he made a big point of these bullets down on the farm and he said they were put down there in July. I don't know what he's basing that on? The evidence I heard Tom Miller say that he was down there. He was painting the fence and John was there target practicing and he didn't

know whether he had a shotgun or what. And the question was, did you see what he was doing or where?
page 2745 } And he said a line which I'm sure you remember, "I can't paint a fence and watch somebody target practicing at the same time." That's exactly what he said. Now he's telling—Mr. Hassan then, implying to you that he pointed out a certain tree and that he was using a certain gun and therefore he had possession of it.

Then, the next question comes down, how did the bullets get in the tree if he didn't put them there? We didn't know anything about any bullets in any tree. Mr. Patler testified even down on the farm, on many occasions, there's plenty of evidence in the record, that he used to go there and Rockwell got very upset because he used to spend so much time there. And there's also testimony in the record that Rockwell had sent people down there, on at least two occasions, looking for him and if you know the ways these Nazi boys travel around, up and down, they don't go anywhere without carrying a gun and they could have put bullets down there anytime for one reason or another. They could have been put down there five years ago. They could have been put down there four years ago, three years ago. There isn't a scrap of evidence when they were put there.

page 2746 } There isn't a scrap of evidence on who put them there. But I think the significant part about those bullets is that they went up to Patler's house because he had a reliable informant who turned out to be Captain Lloyd. They went down to the farm and if you look at the pictures, where did they go down there? They went down to the farm and walked right up to the birch tree, got the axe and pulled these bullets out, that's the only tree. Did they say on the stand there was plenty of holes in lots of other trees? They walk up to one tree, one tree, and just chop it up and take the bullets out. I wonder who their reliable informant was on that one? I wonder? It wasn't Miller because we heard what Miller had to say.

Now, they brought in Mr. Pace and Mr. Pace was the young man who had just been thrown out of Germany for embarrassing the United States and he testified, yes, he saw this gun here down in Spotsylvania and that he remembered the coat quite well and so forth. That testimony was nothing more than what we believe to be a last ditch stand to connect up this man with some of the incriminating evidence because nothing else connects him up to it.

page 2747 } You're going to have to take the word of these people in order to believe any of that.

Then we had Frank Smith. Frank Smith who had nothing to hide, nothing at all. He told you all about himself, what he did and his prejudice and everything else. He said he saw that gun down in Richmond during the election of sixty-five and Mr. Patler took the stand. I was waiting for Mr. Hassan to ask him to try the coat on. He could have done that, he didn't do it. One reason why he didn't do it, it's not going to fit. He knows it's not going to fit. I was waiting for him to try the hat on. I don't know why he didn't ask him that, either. It's not going to fit.

Now, the burden of proof is on the prosecution. Now, he's going to comment that I didn't ask him, either. I don't have to prove defense, he does. I don't have to prove it's not his coat, he's got to prove it. I don't have to prove he's not got the gun, he's got to prove he did have it.

Then we have this place where they found the coat which is one more element which is inconsistent with the rest of the proof. There's plenty of witnesses who stated straight down the street, down Liberty Street, directly
page 2748 } to the wood. The only evidence they had that they tried to show that he didn't go that way was the evidence of that young boy who said he was downstairs and he came up, and he doesn't see anybody run by. They have to have the man turn on Liberty Street, in other words to have the coat or that's not significant at all. It wasn't shown to one, not one, it wasn't shown to a single witness that said, yes, I saw him running down the street. Why didn't they do that? Not one witness they showed the coat to. I think the case comes right down to this. I think we've shown beyond any question where Mr. Patler was that morning and I think the witnesses have indicated and Mr. Hunt's test run and so forth show conclusively that he could not have been at that scene. And in view of the light of the other testimony, we feel that you'll have no difficulty in all in finding that the Commonwealth has totally failed to connect up any type of chain of circumstances, to a moral certainty in your mind, and if that's the case you have no choice, you've got to find the defendant not guilty.

Thank you.

The Court: Mr. Hassan.

page 2749 } Mr. Hassan: If the court please. Ladies and gentlemen of the jury, Mr. Harrigan talked about Inspector Cole and said that Inspector Cole said that this boy was walking. He didn't say he was walking, he

said he ran in between the buildings. That he was pacing and when he came around, he ran. He didn't say he was walking. He said he was hurrying along when he first saw him. It was a continuous flight that was observed by Inspector Cole.

Then he talked about eye witnesses and I told you and I believe the creditability of an eye witness depends upon his immediate reaction to the first available picture to meet the memory he's seen with his eye. Whether T. V. or the newspaper intervened between the occurrence and the seeing of the defendant, you never know whether it was the T. V. or the newspaper, that identifying the defendant or the immediate reaction and it was the immediate reaction of Mr. Hall that the man he saw running was the man whose picture was in the paper. This was after he did not believe that he could identify him. But that immediate reaction was his, so the man in flight on Liberty Street was identified as Patler wearing a dark raincoat. It's not circumstantial, that's pretty solid identification.

He would have you believe that a negative finding is something in favor of the defendant. A negative finding was only the efforts of the police to determine whether or not someone else was involved. They didn't say that they could make an identification from that dirt. They said that there were insufficient impurities in the dirt and the shoes or in the sample to make an identification of any kind just as it was insufficient impurities in the tar to show inconsistent with all commercial types. These were efforts to obtain the truth. They proved nothing except the hard work of the police department to present to you all the truths that were available with all the experts.

When the ballistics man was on the stand, Mr. Harrigan didn't ask him about the paraffin tests. He didn't ask him about residue and powder burns, whether a gun that had been fired would have left them if not fired near the clothing. He didn't ask the expert, never once did he establish the scientific standing of the paraffin tests and I have never seen it established. It's in the category of a lie detector, a non-scientific investigative aid but not scientific expert field of testimony.

Mr. Harrigan said I should have produced the shoes of the workmen. Mr. Harrigan didn't ask any questions about the shoes. It's quite evident there was so many it would have been utterly impossible to distinguish whose shoe prints, or what, or when they were put there. It was not a roof occupied recently only by the assailant,

but on the same day by a workman and an engineer and the day before by a maintenance man and before that a workman over a long period of time.

Next, Mr. Harrigan talks about that creek and those stones and that kneeling down and he showed you a picture from the top of the bridge, but he didn't show you the picture that shows the gun on the rocks under the bridge with the officer showing the spot where it was found and the rocks where it was. It couldn't have fallen wedged between the rocks or been thrown there, it had to be placed and those rocks had to be moved. And the man moving them could have knelt as Mr. Harrigan did and got wet.

No one said he was wet in a straight line. He was wet six inches above the knee. No one said how regular or irregular that was.

page 2752 } He said I never asked him to try on the coat and that I could have. He tried to stop me before and the judge overruled his objection.

Mr. Harrigan: Wait a minute. I tried to stop you?

Mr. Hassan: When I said that I cannot compel the defendant to testify against himself, that I was limited in cross examination to the direct examination.

Mr. Harrigan: I object to that.

Mr. Hassan: And he did not ask him—

Mr. Harrigan: I object to that. He was on the stand and you could have asked him anything you wanted to.

Mr. Hassan: That's not true.

The Court: Well, he couldn't ask him anything on cross examination outside the scope of direct examination.

Mr. Harrigan: And I asked about coats on direct examination. And I asked was that the only coat you had.

The Court: The jury's recollection will have to govern. I cannot recall.

Mr. Harrigan: I want to straighten that out.

page 2753 } Mr. Hassan: He did ask if he had any other coat and he said no. He didn't ask him about this coat.

Mr. Harrigan: Your Honor, that coat was over here and all over the place and we saw it.

Mr. Hassan: When he had the defendant on the stand he did not take it over to the defendant and ask him one single question. He did not ask him to put it on. He did not question him about it and I was limited by that.

Mr. Harrigan: That's what I object to. He was limited by my direct examination. If he had asked him to put that

coat on I would have to—I don't want to leave the implication—

Mr. Hassan: (interposing) That's exactly what it is, implication, Your Honor.

The Court: I do not recall that the witness was asked anything about the black and white coat which is the Commonwealth exhibit, on either direct or cross examination.

Mr. Harrigan: What about redirect, then.

The Court: That could go beyond cross examination. My recollection of his direct testimony is that he page 2754 } was asked about three coats that were his but nothing else. Therefore, I think Mr. Hassan could not have opened it up.

Mr. Hassan: What about the gun? He said I never did tie the gun into Patler with the shot. I think it's exclusively tied into him. No question, that's the gun, exclusive of all other weapons, that fired the shot. That's the gun that Patler fired on the farm. That's the gun that Patler said he didn't have, that witnesses said he didn't have. I cannot help who the witnesses are. I can't go get a peacher or a judge, it must be the man or the woman who has the information. You have to judge their creditability. I don't know if anyone was thrown out of Germany. I know only of the impression of witnesses on the stand and if anyone ever tied anyone into a gun, Mr. Pace tied him in at 928 North Randolph and at Spotsylvania. And the bullets on the farm tied in through ballistics experts with the gun that killed Rockwell.

He tried to give you the impression that this gun was brought around to Mr. Lloyd. You remember the big to do about the drawing by Lloyd of what the gun looked like and where was it? You will remember that before the gun was found Mr. Lloyd identified the gun that page 2755 } Sergeant Kadel who had Mr. Lloyd make a drawing and I sent it to the search party and it was never found. Mr. Lloyd said that he never did see the gun until it was found and in the police department. He never saw the gun and identified it and he drew it before he saw it in the custody of the police.

Where else do you find people who know what Patler wore and what Patler had on, other than in the American Nazi Party. That's where he lived, that's where he worked, that's where he had his clothes. Who else could identify him or his activities.

Now, Mr. Harrigan made a big issue why something wasn't done on the twenty-fifth, to go to the bank and talk to the

teller, to go to the post office, to go to the gas station, to go to the paper company. You know why nothing was done. Mr. Patler never told the detective. His lawyer, Mrs. Lane, was there and wouldn't let him talk. How could the police be expected to investigate it? If he talked it was to Mrs. Lane, Mr. Morris and Mr. Harrigan and on the twenty-fifth of August. No burden is on the police department to investigate that which they do not know about. They were as hot on it as anybody could be and they can't

page 2756 } complain if it got cold.

How did they know the tree? I remember what Tom Miller said. He didn't say he didn't have time because he was painting the fence, not to know where he was shooting. He just didn't pay that much attention because he was painting the fence to know what kind of gun he was using. He said, over there in the meadow. And how do you find the tree? You walk through the meadow and you find the seven point sim three milimeter cartridges where the target shooting was. Where is the cartridges? That tree? You find the shells shot. You don't go chopping trees looking for slugs.

Old party members know about target shooting and so did John Patler. John Patler had that gun, that's why they dug that tree.

Now, Mr. Harrigan said that the Commonwealth has failed to carry this case to a moral certainty. The testimony is a reasonableness or the hypothesis created by the circumstantial evidence beyond a moral certainty. George Lincoln Rockwell was dead beyond a moral certainty. He was killed by a seven point six three Mauser beyond a moral certainty, beyond any hypothesis other than the reason-

page 2757 } able hypothesis that he was killed by that gun.

Beyond a moral certainty the man who fired it got his pants halfway wet up on that roof. Beyond a moral certainty Mr. Hall identified him as John Patler. Beyond a moral certainty that gun was recently in the possession of John Patler. After he said it was lost, it was seen, it was used, and it was hidden in a direct flight route within minutes of where John Patler was found, wet to a moral certainty six inches above the knee, in flight. There is no element of this case that leaves room for a hypothesis other than that reasonable hypotheses of guilt beyond any question of moral certainty.

You must, I believe, find this defendant guilty of murder in the first degree, the ambush slaying of George Lincoln Rockwell.

The Court: Ladies and gentlemen, the jury will be excused in the custody of the sheriff to eat dinner.

I will ask the two alternate jurors to remain with the jury for dinner and to observe the instructions of the court until the jury returns to the courtroom to commence deliberation.

During the time that you are out you should
page 2758 } not discuss the case at all. You should not come to any final conclusion about it until you are assembled together and can discuss it as a whole, as a jury of twelve. You should not discuss it individually or come to any final conclusions about it until that time.

The instructions of the court, heretofore given, of course, continue throughout the evening and the balance of your deliberation.

When you return, if all jurors are prepared to retire and deliberate upon their verdict, the alternate jurors, Mr. Reece and Mrs. Stiles, will be excused and discharged at that point from other jury service and free to return to your homes.

I will not probably see you alternate jurors again and I want to express now my very sincere appreciation to you for the heavy burden which has been borne, which is no less than the jurors in this case and the time taken from your lives to devote to this. Your community owes you and all the other jurors a substantial gratitude for the work you are undertaking and the seriousness and consciousness with which you have all applied yourselves.

When you retire your first duty will be to
page 2759 } elect one of your number as a foreman and then to consider your verdict.

Your problem then is twofold, to decide the guilt or the innocence of the defendant, and then if you decide that he's guilty to fix his punishment within the limits set by the court in the instructions on that subject.

If you should find him not guilty, you would simply write out your verdict on a plain piece of paper, dating it and saying, "We the jury find the defendant not guilty." And it needs not to be signed, only by the foreman.

If you find the defendant guilty, you would similarly write out your verdict on plain paper, date it and sign it and state, "We the jury find the defendant guilty of murder in the first degree and fix his punishment at . . ." and fill in the punishment which you find proper. It will also be signed only by the foreman.

When you return from dinner, please retire directly to the jury room and commence your deliberation.

I will go home for dinner but I expect to be back by the time you will be here and counsel will be available on call. If any questions arise you may call us.

The jury will now retire.

(Whereupon, the jury was retired.)

(At 12:12 A. M., December 16, the jury was returned.)

The Clerk: Ladies and gentlemen, have you reached a verdict.

The Foreman: We have, sir.

The Clerk: Sixteen December, nineteen sixty-seven. We the jury find the defendant guilty of murder in the first degree and fix his punishment, to be confined in the penitentiary for a term of twenty years, George E. Clark, foreman.

The Court: Poll the jury.

(Whereupon, the jury was polled; all answered in the affirmative.)

The Court: Do counsel wish to examine the verdict?

Mr. Harrigan: Yes, Your Honor.

Mr. Morris: Yes, Your Honor.

The Court: Mr. Hassan, do you wish to see it?

Mr. Hassan: I do not, Your Honor.

page 2761 } The Court: Ladies and gentlemen, I do not wish what I say to be taken as commenting upon your verdict, one way or the other, for that would be improper and is not my function. But I do wish to comment upon your performance and the way you addressed yourself to your work.

You are to be congratulated for a very attentive and careful service and you have carried one of the heaviest burdens that is imposed upon a citizen. For that service your Commonwealth and your fellow citizens owe you a great debt of gratitude.

I want to express my appreciation to you for the way in which you approached your task. Your verdict is received. I thank you very much.

You're discharged and free to go. Thank you.

Are there any motions.

Mr. Morris: If Your Honor please, may we suspend any

sentencing until Monday when we're a little more alert to the situation.

There will be motions, yes, Your Honor.

The Court: All right.

The verdict is received and the case will continue until ten o'clock Monday morning.

page 2762 } Counsel are granted leave to file such motions as they are advised on Monday and the motions will then be considered.

No sentence will be pronounced at this time.

Mr. Harrigan: We would intend to sign a motion to set aside the verdict. Would it be possible to have a motion to set it aside. Perhaps we could get a date now. Otherwise, we have to work all weekend.

The Court: Take it up Monday.

You can appear on Monday and at that time, you may advise me what motions you intend to file and I'll give you the time within which to file them. They need not be filed by Monday.

Mr. Harrigan: All right, Your Honor.

The Court: The defendant is remanded to the custody of the sheriff and the case will be continued until ten o'clock Monday morning.

(Whereupon, this matter was concluded at 12:28 A. M., December 16, 1967.)

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk

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Petition for Writ of Error and *Supersedeas*
6/26/1968

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SUPREME COURT OF APPEALS

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Richmond, Va.

Record No.

7103

RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND

JOHN PATLER, Plaintiff in error,

versus

COMMONWEALTH OF VIRGINIA, Defendant in error.

PETITION FOR WRIT OF ERROR AND
SUPERSEDEAS

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7103

JOHN PATLER, Plaintiff in error,

versus

COMMONWEALTH OF VIRGINIA, Defendant in error.

PETITION FOR WRIT OF ERROR AND
SUPERSEDEAS

*To Howard G. Turner, Clerk Supreme Court of Appeals of
Virginia:*

1*

***II. INTRODUCTION**

Your petitioner, is aggrieved by a judgment of conviction and a sentence of twenty (20) years entered against him on the 27th day of February 1968 by the Circuit Court of Arlington County on a charge of murder. Wherein the appellant John Patler was a party defendant and the Commonwealth of Virginia was the complainant.

**III. MATERIAL PROCEEDINGS
IN THE LOWER COURT**

On August 25, 1967 your appellant, John Patler, was arrested and charged with the murder of the Nazi Party Leader, George Lincoln Rockwell. The Grand Jury returned an indictment charging that John Patler did on or about the 25th day of August 1967 feloniously kill and murder one George Lincoln Rockwell, feloniously and against the peace

and dignity of the Commonwealth. Thereafter the defendant was arraigned in the Circuit Court of Arlington County, Virginia, and entered a plea of not guilty and the Court granted leave to file all motions by November 2, 1967. On November 2, 1967 the defendant, by counsel, filed motions to suppress evidence which consisted of three separate allegations. (1) that the defendant's arrest was illegal and without probable cause and that the fruits of said arrest should be suppressed. (2) that all evidence seized as a result of an illegal search on the defendant's residence in Arlington, to-wit: 2522 Lee Highway, Arlington, Virginia, be suppressed based on the insufficiency of the affidavit to establish probable cause for the search warrant and other grounds in the motion. (3) that all evidence seized as a result of an illegal search of the defendant's country residence in Highland County, Virginia be suppressed based on the insufficiency of the affidavit to support the search warrant; and for other grounds stated in the record. (R. p. 26-31).

2* *In addition defendant, by counsel, filed a motion, styled Combined Motions for Discovery and Inspection, Issuance of *Subpoena Duces Tecum* and Disclosure of all Exculpatory Material and Information, and Points and Authorities on said motion, which motion set out in detail the various items of information requested (R. p. 21-25), in addition defendant, by counsel, filed an affidavit in support of a motion for *subpoena duces tecum* (R. p. 14-15).

On November 22, 1967 the Court heard testimony and took evidence on the motion to suppress based on the illegal arrest of the defendant. After hearing evidence the Court overruled the motion to suppress to which counsel for the defendant duly excepted.

On November 24, 1967, the Court heard testimony and took evidence concerning the motion to suppress evidence found as a result of the search of the defendant's property in Highland County, Virginia. After hearing testimony and receiving evidence the Court ruled that the affidavit was insufficient and the search warrant was illegal (T. Nov 27/67, p. 208).

Over objection, the Court then continued the matter to hear further evidence on the issue on whether the cartridge cases and slugs found where within the curtilage of the property in Highland County. On November 27, 1967 after hearing evidence on the location of the items seized, the Court ruled that the items seized were not within the curtilage and therefore were admissible into evidence. The Court further overruled the defendant's contention that the items seized

were seized under color of the illegal search warrant and as a direct fruit of the primary illegality. The defendant, by counsel, duly objected and excepted to the Court's ruling (T. Nov 27/67, p. 304-314). The Commonwealth *stipulated that the items seized during the search conducted on defendant's residence, 2522 Lee Highway, Arlington, Virginia, would be returned and not used in evidence. Further that such search was illegal. (T. Nov 24/67, p. 214-230; T. 1714)

On November 22, 1967 the Court heard argument on the combined motions for Discovery and Inspection, Issuance of *Subpoena Duces Tecum* and Disclosure of all Exculpatory Material and Information. The Court ruled that the Motion for Discovery in each of its several parts should be denied and that the Commonwealth had a duty to disclose such information, but only at trial. To all of which the defendant objected and excepted on the grounds stated in Argument. (T. Nov 22/67, p. 62-66).

On November 27, 1967 the selection of the jury began. Whereupon the Commonwealth Attorney and counsel for the defendant requested permission to conduct a *voir dire* on each juror separately and apart from the other jurors. To which motion the Court overruled, and exception was noted by counsel for the defendant and for the Commonwealth. The Court then conducted its *voir dire* examination. Then Counsel for the defendant asked the jury panel whether they had read about the case in the newspapers or heard comments over the radio and television and whether they had occasion to discuss the case or express any opinion concerning the case to their families. Whereupon six members of the panel raised their hands. Counsel then proceeded to ask whether the prospective jurors had mentioned any opinion they had regarding the case which question was objected to, the Court sustained the objection and counsel for the defense duly excepted. The Court then precluded counsel from interrogating any of the other members of the panel with regard to whether they had formed or expressed any opinion regarding the information they had received from
4* *newspapers or over television to which counsel for the defendant duly excepted. Counsel for the defendant then attempted to enquire whether any members of the panel had any strong feelings against the Nazi Party to which the Court sustained an objection, and to which counsel duly excepted. Counsel for the defendant then moved that all members of the panel who had read about the case in the news-

papers be struck for cause which motion was overruled by the Court and duly excepted to by the defendant.

The jury was then sworn and impaneled and after opening statement the Commonwealth presented testimony and evidence.

Counsel for the defendant anticipated that certain identification witnesses may be called which witnesses had attended show-ups or line-ups conducted without notice to the defendant and in the absence and without notice to counsel for the defendant, and requested that prior to identification witnesses testifying the Commonwealth proffer whether any show-ups or line-ups had taken place so that a hearing outside of the presence of the jury could determine if the in-court identification should be struck. The attorney for the Commonwealth refused to proffer whether any witness had attended any line-up and proceeded to call Mrs. Alma L. Kilpatrick and without proffering her testimony allowed her to make an equivocal courtroom identification. Counsel immediately approached the bench and asked for a hearing outside the presence of the jury, and again made the motion to require the Commonwealth to proffer whether the witness had attended a pre-trial line-up or show-up to which the Commonwealth refused to proffer and the Court overruled defense counsel's motion to require the Commonwealth Attorney to proffer to which counsel for the defendant duly excepted.

Counsel for the defendant conducted a hearing outside
5* *the presence of the jury on Mrs. Kilpatrick, wherein it developed that the witness had been brought to Court on two occasions to view the defendant, whereupon counsel moved the Court for a mistrial and to strike her courtroom identification based on the *Wade* decision, to which motion Court overruled and defense counsel duly excepted (R. p. 558-559).

The Commonwealth then proceeded to call Nancy Ellen Thoburn who upon objection of counsel, a *voir dire* was conducted concerning a line-up or show-up she attended at the police station wherein Mr. Patler was the only party viewed and after the *voir dire* examination on motion for counsel for the defendant, the Court sustained the objection and ruled that Mrs. Thoburn could not testify to a courtroom identification. However, the Court further ruled that Mrs. Thoburn could testify as to what she told the 1 police immediately after the illegal viewing to which counsel for the defendant objected and excepted (T. p. 622-624). The Court further instructed Mrs. Thoburn that she could not testify that she had

observed Mr. Patler in the police station on August 25, 1967 (T. p. 625).

The jury was recalled and in the presence of the jury the Commonwealth attorney then proceeded to ask Mrs. Thoburn whether she made a statement to a police officer concerning any picture of live viewing of Mr. Patler, to which objection was taken and overruled and exception taken. The witness proceeded then to answer that she had seen Mr. Patler at the police station on the same day, August 25th. (T. p. 630).

Immediately thereafter counsel approached the bench and moved for a mistrial based on her statement that she saw the defendant at the police station, which motion was 6* denied and exception *was taken. (T. Nov 29/67, Bench Conference, p. 6).

Commonwealth then proceeded to introduce police radio dispatched tapes which contained telephone calls from unknown and unknown authorities to which counsel for the defendant objected and noted his exception (T. p. 1521-1524). The tapes were played, thereafter counsel moved for a mistrial which motion was overruled and counsel excepted (R. Dec 6/67 Bench Conference p. 4). The Commonwealth thereafter offered Exhibit 5-G which was a letter written from Patler to Rockwell and further objected to the Court reading Syllabus No. 4 from *Obroyle v. Comm.*, 100 Va 785 to the jury for justifying Exhibit 5-G into evidence. The Commonwealth then proceeded to present F.B.I. experts and other testimony and closed its case at which time counsel for the defendant made a motion to strike the Commonwealth's evidence which motion was denied and exception taken. The defendant then proceeded to introduce evidence and testify as to alibi and other evidence and then closed his case at which time the Commonwealth then brought on a rebuttal witness. Detective Walter Kadel. Prior to Det. Kadel taking the stand, counsel for the defendant approached the bench and the Commonwealth and the Commonwealth proffered that Det. Kadel would testify as to an inconsistent statement made by Mr. Sam Ervin the defendant's father-in-law during the course of a search at his residence at 2522 Lee Highway, Arlington, Virginia. Defendant objected on the ground that such search warrant was illegal and further that on the motion to suppress based on the insufficiency of the affidavit and search warrant, the Commonwealth had stipulated that the question was moot and that all evidence received as a result of such search would be returned and not be offered in evidence.

The Court overruled the motion and allowed Det. Kadel 7* to *testify as to a conversation that he had during the

search with Mr. Sam Ervin where Mr. Ervin allegedly said that Mr. Patler had left the house around 11:00 o'clock, to all of which objection was noted by the defendant.

Thereafter the Commonwealth rested and the defendant renewed his motion to strike the evidence of the Commonwealth's and renewed the motion to strike the introduction into evidence of certain items, to-wit: the raincoat found near the scene, a stocking found in the pocket of the raincoat which was first found by a lab technician at the F.B.I. and other items previously objected to, to all of which the Court overruled and counsel duly excepted.

Instructions were then argued and exceptions taken to the granting and refusing of various instructions which were assigned as error. The jury was instructed. Closing arguments by the Commonwealth and the defendant were made. The jury retired and after deliberation returned a verdict finding the defendant guilty of murder in the first degree and fixing his penalty at 20 years in prison. Counsel for the defendant thereafter moved the Court for leave to file written grounds to set aside the verdict, which the Court granted. A motion to set aside the verdict and entered judgment of acquittal or in the alternative award a new trial was filed on January 5, 1968 (R. p. 134-138). The motion to set aside the verdict was argued by counsel which motion the Court overruled each and every ground and counsel excepted to the Court's ruling. A final order of conviction was entered on the 27th day of February 1968, (R. p. 149).

The transcript was tendered and certified by the Court.

Notice of appeal and assignment of error was filed April 8* 26, 1968 *(R. p. 152-158). Designation of the parts of the record to be printed were filed and the notice to transmit the record.

IV. ASSIGNMENT OF ERROR

1. That the verdict of the jury was contrary to the law and evidence in that the evidence was insufficient as a matter of law to support the verdict in that the verdict was based solely on circumstantial evidence which did not establish guilt to a moral certainty and for other reasons stated in the record.

2. The Court erred in denying the defense motion to strike the evidence of the Commonwealth at the conclusion of the Commonwealth's case on the ground that evidence taken in its most favorable light did not exclude every reasonable hypothesis of innocence.

3. The Court erred in denying the motion to strike the evidence of the Commonwealth at the conclusion of the case on the ground that the evidence established a reasonable doubt as a matter of law.

4. The Court erred in refusing to allow counsel to question each juror outside the presence of other members of the jury panel as to interest, bias, prejudice, expression of opinions, in order to determine if each juror stood indifferent to the cause, which motion was made by the Commonwealth Attorney and then by defense counsel.

5. The Court erred in refusing to allow counsel for the defense to ask the jury panel on *voir dire* as to whether any expressed or formed any opinion about the Nazi Party of members therein or whether any jury member was sensible of any bias or prejudice against the Nazi Party and members and ex-members therein even after two members of the jury expressed prejudicial feelings against the Nazi Party.
9*

*6. The Court erred in refusing to strike for cause all jurors who had read the newspaper accounts and saw television reports concerning the Rockwell shooting.

7. The Court erred in refusing to suppress the bullet casings and slugs found on the Highland County farm which were seized during an illegal search on the grounds that they were the fruits of an illegal search and for other reasons stated in the record.

8. The Court erred in allowing evidence of slugs and casings found on the Highland County farm to go to the jury on the ground they were never connected to the defendant and it left the jury to speculate as to their evidentiary value and for other reasons stated in the record.

9. The Court erred in failing to strike the Courtroom identification testimony of Mrs. Alma Kilpatrick on the ground it was a product of two illegal one-man show-ups conducted in the absence of and without notice to defendant or counsel and for other reasons appearing in the record.

10. The Court erred in refusing to strike the identification testimony of Mrs. Nancy Thoburn on the ground it was the fruit of her observations of the defendant during an illegal one-man line-up conducted in the absence of and without notice to defendant or counsel and for other reasons appearing in the record.

11. The Court erred in allowing Mrs. Thoburn to testify she had seen Mr. Patler at the police station on August 25th which viewing was made during an illegal one-man line-up

without notice to defendant and without notice to and in the absence of counsel.

10* *12. The Court erred in allowing Mrs. Thoburn to relate what she told the police officer immediately after the illegal viewing of the defendant on the grounds that:

(a) Since the Courtroom identification was stricken, the prior out-of-court declaration of the witness should not have been allowed to rehabilitate the witness.

(b) That statement was a product of and directly related to the illegal viewing.

(c) For other reasons stated in the record.

13. The Court erred in refusing to require the Commonwealth Attorney to proffer whether identification witnesses had attended line-ups conducted in violation of defendant's right to counsel and in the absence of notice to the defendant and counsel, to-wit: testimony of Mrs. Kilpatrick and Mrs. Thoburn.

14. The Court erred in admitting into evidence the Courtroom identification testimony of Glenn Hall since his testimony was predicated on newspaper pictures and stories concerning the apprehension of the defendant where such pictures and articles were so suggestive and conducive to irreparable mistaken identification, that such evidence violated defendant's constitutional rights.

15. The Court erred in allowing Det. Walter Kadel to testify in rebuttal as to an inconsistent statement allegedly made by the witness Sam Ervin which alleged statement was acquired during and the fruit of an admitted illegal search of the defendant's home.

16. The Court erred in denying each matter requested in the combined motion for discovery and inspection, motion for a **subpoena duces tecum* and motion for disclosure of all exculpatory material and information itemized in the motions prior to trial.

17. The Court erred in denying defendant's motion for all exculpatory evidence prior to trial that would have aided the defendant in the preparations of his defense, in cross examination of witnesses, and in securing additional evidence favorable to the defendant.

18. The Court erred in ruling that the Commonwealth attorney could determine what evidence should be produced at trial which was exculpatory or helpful to the defense.

19. The Court erred in overruling the motion to suppress which alleged that the arrest of the defendant was without

probable cause and erred in failing to suppress all evidence which was a fruit of said illegality.

20. The Court erred in admitting evidence of the condition of the defendant's clothes on the ground all such testimony was the fruit of the illegal arrest.

21. The Court erred in allowing the hearsay telephone conversations from unknown parties to the police station shortly after the shooting to be played from tapes to the jury over objection of defense counsel.

22. The Court erred in admitting the coat found into evidence on the ground that no evidence connected the coat with the criminal agent and therefore left the jury to speculate on its evidentiary value and for other reasons stated in the record.

23. The Court erred in admitting into evidence the piece of woman's stocking-panties found in the coat pocket during the trial where no evidence was presented showing the panties were in the pocket when the coat was found and for 12* other reasons *appearing in the record.

24. The Court erred in admitting into evidence the letter from Patler to Rockwell (Exhibit 5-G) for the reasons stated in the record.

25. The Court erred in refusing defendant's Instruction No. W, dealing with testimony of identification witnesses for reasons stated in the record.

26. The Court erred in refusing Instruction No. T, dealing with threats against the deceased by other persons for reasons stated in the record.

27. The Court erred in refusing Instruction No. P, for reasons stated in the record.

28. The Court erred in refusing Instruction No. J, for reasons stated in the record.

29. The Court erred in refusing Instruction No. H, dealing with alibi for reasons stated in the record.

30. The Court erred in refusing Instruction F, dealing with alibi for reasons stated in the record.

31. The Court erred in refusing Instruction No. E, for reasons stated in the record.

32. The Court erred in refusing Instruction No. C, on presumption of innocence for reasons stated in the record.

33. The Court erred in refusing Instruction No. I on circumstantial evidence for reasons stated in the record.

34. The Court erred in refusing Instruction No. I-1 for reasons stated in the record.

35. The Court erred in granting Instruction No. 5 for the Commonwealth in that it:

(1) Infers the Commonwealth established a *prima facie* case.

(2) It states only sufficient evidence is necessary to establish a *prima facie* case instead of evidence beyond a reasonable doubt.

36. The Court erred in refusing to grant a mistrial on the ground of prejudicial remarks made by the Commonwealth Attorney at bench conferences to defense counsel which remarks were deliberately audible to the jury.

37. The Court erred in conducting the *voir dire* examination on eight year old Christine Freeman in the presence of the jury on the grounds it forced defense counsel to repeatedly object to the procedure in the presence of the jury and for other reasons appearing in the record.

38. The Court erred in allowing Detective Faulconer to testify as to his opinion that the reason he put handcuffs on the defendant was that he was similar to the subject of the communication on the radio.

39. The Court erred in failing to strike the testimony concerning the defendant's affiliation with "Kill" magazine in 1962 on the grounds it was remote, immaterial and not relevant to any issue.

V. QUESTIONS INVOLVED

1. Was the evidence sufficient to support the verdict?

2. Did the Court err on *voir dire* in (1) overruling the request to examine each member of the jury panel outside the presence of other members of the panel? (2) refusing to allow defense counsel to elect if members of the panel had expressed or formed any opinion against the Nazi Party or members therein? (3) refusing to allow defense to question members of the panel as to discussions or opinions expressed concerning newspaper stories, *radio and television commentary concerning this case and thereafter refusing to strike for cause all jurors who had discussed the case with friends or relatives?

3. Did the Court err in refusing to suppress slugs and casings seized under the Highland County search warrant which affidavit and search warrant the Court ruled illegal?

4. Did the Court err in refusing to strike the Courtroom identification testimony of Mrs. Alma Kilpatrick as the fruit of two illegal show-ups?

5. Did the Court err in (1) allowing Mrs. Nancy Thoburn to testify to identification statements she made to the police

at the police station during an illegal line-up? and (2) refusing to grant a mistrial when she testified she saw Patler at the police station on August 25th?

6. Did the Court err in refusing to require the Commonwealth Attorney to proffer whether identification witnesses had attended line-up conducted without notice to defendant and counsel?

7. Did the admission of identification testimony of Glenn Hall which was predicated on newspaper articles and pictures, violate defendant's constitutional rights?

8. May an oral statement acquired in the course of an illegal search of defendant's residence from a witness be used in rebuttal to impeach the witness?

9. Did the Court err in refusing to require the Commonwealth Attorney to produce all exculpatory evidence and other evidence helpful to the defense prior to trial?

10. Did the Court err allowing telephone conversations recorded shortly after the shooting on police dispatcher 15* tapes to *be played to the jury?

11. Did the Court err in admitting into evidence circumstantial evidence which did not support any reasonable inference as to defendant's guilt, to-wit: coat, woman's panty-stocking?

12. Did the Court err in admitting Exhibit 5-G into evidence?

13. Did the Court err refusing to grant a mistrial for prejudicial remarks made by the Commonwealth Attorney at Bench Conferences which remarks were deliberately audible to the jury?

14. Did the Court err in conducting the *voir dire* examination of 8 year old Christine Freeman in the presence of the jury on the ground it forced defense counsel to object in the jury's presence?

15. Did the Court err in allowing Detective Faulconer to testify as to his opinion that the reason he put handcuffs on the defendant was that he was similar to the subject on the police radio?

16. Did the Court err in refusing defense Instruction No. W, dealing with testimony of identification witness?

17. Did the Court err in refusing Instruction No. T?

18. Did the Court err in refusing Instruction No. P?

19. Did the Court err in refusing Instruction No. J?

20. Did the Court err in refusing Instruction No. H?

21. Did the Court err in refusing Instruction No. F?

22. Did the Court err in refusing Instruction No. E?

23. Did the Court err in refusing Instruction No. C?

24. Did the Court err in refusing Instruction No. I?
- 16* *25. Did the Court err in refusing Instruction No. I-1?
26. Did the Court err in refusing Instruction No. 5 for the Commonwealth?
27. Was the evidence referring to "Kill" magazine prejudicial?

VI. STATEMENT OF FACTS

On August 25, 1967 at approximately 11:58 a. m., George Lincoln Rockwell, the leader of the Nazi Party, was shot and killed in a shopping center in Arlington County. The evidence was disclosed that a lookout was placed for a man of Mexican or Spanish descent wearing yellow socks and dressed in dark clothes and was seen fleeing from the vicinity of the scene. At approximately 12:30 p. m. the defendant, John Patler, was apprehended approximately one mile away from the shopping center standing on the corner at a bus stop waiting for a bus. He was dressed in a yellow shirt, dark pants and blue canvas sports shoes. The first officer at the scene of the arrest was Detective Davis who testified that he observed that the defendant's pants were wet up to the knees but that his shirt was dry (T. p. 980). Detective Faulconer, who later came to the scene, testified that Patler was perspiring and that his shirt was wet and that his trousers were wet from above the knees down. The defendant was then searched and nothing was found on his person. He was handcuffed, placed into the patrol car and driven back to the scene of the shooting. At which point the police officer was directed to immediately take the defendant to the police station. The defendant was immediately transported to the police station and taken to the detective bureau. He remained in the detective bureau for several hours during the course of which time the Commonwealth brought down to the police station approximately five people for purposes of viewing the defendant in a one-

17* man line-up or show-up. The *witnesses were placed in the hall of the detective bureau and the defendant was walked by the witnesses. No line-up with other persons was conducted for any of the witnesses. The defendant was merely walked by these people in the custody of the detective. No notice was given to the defendant and no opportunity was given to counsel for the defendant to be present at the viewing. Counsel raised the issue during the course of the trial that the line-up procedure was unconstitutional and illegal and that the courtroom identification was the fruit of said illegality

and should be stricken. The five people at this viewing were James Cummings, Thomas E. Blakeney, Nancy Ellen Thoburn, Rebecca Middleton and Mr. Stuart, all of which testified in the case. Only one of the five, Nancy Ellen Thoburn, attempted to make any courtroom identification, which is the subject of an assignment of error in this case.

Thereafter the defendant was taken to the jail at which time all of his clothes including his shoes, his pants and his shirt were taken by the police and forwarded to the F.B.I. for purposes of scientific evaluation. On the 26th day of August 1967 an affidavit was sworn to by Detective Crickenburger alleging "that he has information from a reliable source and after an investigation he is of the opinion that ammunition used in a 30-calibre Mauser marked FNX and a Navy ball-cap pistol used in the murder of George Lincoln Rockwell is being stored in premises, 2522 Lee Highway, also plans or drawings or other information pertaining to the above crime," and it commanded that the dwelling located at 2522 Lee Highway, Arlington, Virginia be searched. Pursuant to the affidavit and search warrant issued based on said affidavit the dwelling was searched on the evening 18* of 26th of *August 1967.

Defendant, by counsel, filed a Motion to Suppress alleging that said affidavit was insufficient and for other grounds, and moved that all items seized be suppressed as evidence. On the 16th day of September 1967, one C. L. Bradley, State Police Investigator, swore to an affidavit in the County of Highland, Virginia, which alleged that he verily "believes that a certain empty cartridge cases and slugs from a Mauser 7.63 pistol are located on the Sam Ervin property, on the west side of State Highway Route No. 678, in Stonewall Magisterial District, Highland County, Virginia, the said articles being located within the curtilage of the two-story frame dwelling and within pasture land surrounding the said dwelling, and occupied by or in possession of Sam Ervin, unlawfully contains, contrary to law, because—the said cartridges and slugs may be from a pistol used in the murder of George Lincoln Rockwell of Arlington, Virginia".

Pursuant to the warrant, State Police Investigator Bradley and other detectives proceeded to the property and drove up, parked their car near the house. They then proceeded to talk to a hired-hand, Tom Miller, and after conversations with Mr. Miller, began searching for the slugs and cartridge cases specified in the warrant. The search led them into the pasture immediately behind the house, at which point three cartridge cases were discovered and a tree was discovered

with holes in it. The investigators took a hatchet, chopped the bullet slugs out of the tree and placed all items found into containers to be transmitted to the F.B.I. They then proceeded back to the house and posted a copy of the search warrant, together with what they found, on the door of the house and left the premises. Counsel for the defendant 19* filed a *motion to suppress the evidence received as a result of the search based on the insufficiency of the affidavit and search warrant. On argument the Court ruled that the affidavit was insufficient and the search warrant was illegally issued, but then heard evidence as to whether the items found were found within the curtilage of the property and ruled over the objection and exceptions of the defendant that such items were not within the curtilage and therefore were properly seized even though the search warrant was invalid. Counsel for the defendant maintained that the search warrant at its inception was illegal and that the subsequent discovery and seizure of the slugs and bullet casings was a direct product of the primary illegality and therefore should be suppressed, in addition to other grounds set forth in the record.

On November 22, 1967 counsel for the defendant argued his motion for discovery and motion for *subpoena duces tecum* which motion requested that certain information including all exculpatory information and evidence be furnished to the defendant prior to trial. After extended argument on this matter the Court ruled that the defendant is entitled to exculpatory information that the Commonwealth comes into possession of and the Commonwealth has a duty to disclose it to the defendant but has no duty to disclose it to the defendant prior to the trial. Based on this ruling the Court overruled the motion for all items of discovery and denied counsel for the defendant the right to discovery of each and every item of information requested prior to trial to which ruling counsel excepted (T. Nov 22/67, p. 62-66).

Defendant contends that much of the F.B.I. testimony which is hereafter narrated was exculpatory in nature and 20* should *have been furnished prior to trial. On November 27, 1967, the selection of the jury began. The Court conducted its *voir dire* and counsel for the defendant and the prosecution conducted individual *voir dire*s. At the beginning of *voir dire* both the counsel for the defendant and the Commonwealth Attorney requested that each member of the jury be questioned individually outside the presence of the other members of the jury concerning his knowledge of facts concerning the case from newspapers, radio and tele-

vision and whether knowledge of such facts would indicate bias or prejudice on the part of the particular members questioned. Said objection was overruled by the Court. The Court refused to allow defendant or Commonwealth Attorney to question each member individually to which counsel for the defendant objected. The panel was asked by the counsel for the defendant whether they had read about any facts concerning the case in the newspapers or heard them over the television and all but one member of the panel raised his hand (T. p. 41). Thereafter counsel for the defendant asked the entire panel whether they had occasion to discuss the facts they had heard with other people or with their family, whereupon six members of the panel raised their hand. Counsel then asked a prospective juror whether he had formed any opinion about this case at all based on newspaper or television, to which the juror replied "No, I don't think I did". At which point an objection was made the Court sustained an objection. Counsel then requested the Court if he could examine other members of the panel as to the same question. The Court sustained the objection and refused to allow further questions, to which the counsel for the defendant duly excepted. The Court further refused to allow 21* any *questions put to the panel concerning their feelings towards the Nazi Party to which counsel for the defendant duly excepted. Thereafter counsel for the defendant 1 moved that the six jurors who had indicated they had discussed the case with family or other people be struck for cause, to which motion Court overruled and counsel duly excepted (R. p. 64-65).

The panel was sworn and the next day, December 1, 1967, the Commonwealth started putting on evidence. The Commonwealth then proceeded to put on witnesses which established that at 11:50 a. m. George Lincoln Rockwell left the Nazi Barracks to go to the shopping center a distance of several hundred feet, for the apparent purpose of doing some laundry. Several witnesses at the shopping center testified that they saw Mr. Rockwell shortly before the shooting. At 11:58 a. m., the time of the shooting, the witnesses had testified that Rockwell had apparently gotten into his car and had backed the car out of the parking place at which time two shots were fired from the roof of the shopping center and Rockwell fell out of the car onto the street. The police were called and the ambulance was called and Mr. Rockwell was pronounced dead at the scene, taken to the hospital for an autopsy. Medical evidence was presented that Rockwell had died from a single shot through a section of the heart. The

second bullet apparently missed Rockwell. The car at the scene indicated that there were two bullet holes in the windshield.

Two barbers in the shopping center who heard the shots came out and ran to the back of the shopping center in an attempt to get a look at the possible assailant. These two witnesses, James Cummings and Thomas Blakney pursued 22* a person running. Mr. *Cummings caught a glimpse of a man running who was dressed in dark clothes with black hair. Neither witness could make any identification of the person they were chasing. They testified that the person ran down Liberty Street and straight into the woods at Bon Air Park. Several other witnesses testified as to fleeting glimpses of a man they had seen running.

Prior to Commonwealth calling identification witnesses counsel for the defendant approached the bench and asked the Court that if courtroom identification was going to be an issue, counsel would like the hearing outside the presence of the jury to strike their evidence on the basis of an illegal line-up offered to the witnesses (T. Nov 28/67, Bench Conference p. 71).

On November 29, 1967 Commonwealth attorney called Mrs. Alma L. Kilpatrick who proceeded to testify that she was in the shopping center at the time of the alleged shooting and that she observed a man coming from the fence towards the back of the shopping center near the roof, come by her car. When asked if she could give a description of the individual she saw she related "I believe that he was dark haired and he had either a brownish dark coat on and he looked something like what Mr. Patler looks like". Question: "Where did you see Mr. Patler?". Answer: "I saw Mr. Patler again in the courtroom". (T. p. 523). Counsel thereafter approached the bench and stated that there wasn't any prior reference to the courtroom and that we didn't believe that it was this courtroom and if it was a show-up or line-up in another courtroom we would like an opportunity to inquire into the circumstances (T. Nov 29/67 Bench Conference p. 3).

On *voir dire* the witness testified that the next day she was shown pictures at the shopping center by the police of 23* various individual and that she was brought down to the police station to look at other pictures. The witness was asked if she had picked out any of those pictures she answered: "I thought that I recognized a couple of people there" and in response to the court's question, "Did they appear to be pictures of different people or all pictures of the same person?", the witness responded: "they were pictures

of different people". In response to counsel's question: "When you say a couple of people there, how many people did you think you recognized?" Answer: "Well I think I recognized about two pictures that I might have seen around town not people that I know personally". (T. p. 534). Thereafter Det. Light made arrangements with the witness to meet her so she could come down to the county courtroom for the sole purpose of viewing the defendant. At that viewing she stated that she did not see the defendant. Neither defendant nor counsel was notified of the viewing. (T. p. 540, 547). The witness then testified that she made arrangements to come down to the Courtroom on a different date for the sole purpose of viewing the defendant again. At the second viewing the witness told the detective regarding in response in whether she could identify the defendant, stated:

Question: "After you got a close look, what did you tell the detectives?"

Answer: "I told them that I wouldn't say no and I wouldn't say yes. We only talked a few seconds".

Question: "That is all that you told them at that time?"

Answer: "I believe so".

Then counsel for the defendant asked: "Did there come a time after that when you changed this, that you wouldn't say no and you wouldn't say yes?"

24* *Answer: "There came a time that I did say that I would say yes"

Question: "When was that?"

Answer: "When I called from Washington State and I changed my mind again cause I don't want to be unsure of anything".

Question: "So there did come a time when you answered yes, is that right?"

Answer: "Yes, and then I decided that I'm just not sure and I can't do that".

Question: "So now you've decided to say . . .

Answer: "I've decided to say I can't positively because I would know that would be a crime, that would be terrible, I can't do that". (T. p. 542-543).

The witness then testified that sometime after the viewing she went to Bremmerton, Washington and approximately a week before the trial she testified she had made up her mind that she could identify Patler. Then she testified that she changed her mind again and said that "I decided that per-

haps I could be wrong, I don't want to positively say that". (T. p. 546).

Counsel moved to strike her courtroom identification based on the *Wade, Gilbert, Stovall* decision to which the Court overruled the motion and counsel noted his exception. (T. p. 549-559).

The Commonwealth then called Nancy Ellen Thoburn who upon objection of counsel a *voir dire* was conducted to determine whether her courtroom identification should be stricken because she viewed the defendant in a one-man show-up in the police station on the 25th day of August 1967. After hearing evidence on the *voir dire* the Court struck the courtroom identification of Mrs. Thoburn, however, it then

25* ruled that Mrs. Thoburn could *testify as to what she told the police officers immediately after the one-man show-up, line-up, on August 25, 1967. (T. p. 622-625). Counsel for the defendant objected and excepted to the Court's ruling since such testimony was the obvious fruit of the illegal line-up to which motion the Court overruled. (T. p. 622-625). The Court then admonished Mrs. Thoburn that she could not testify in front of the jury that she had observed the defendant in a line-up at the police station on August 25th. The jury then returned and Mrs. Thoburn proceeded to testify as to what she told the police officer after the illegal viewing, and in addition she then proceeded to testify that she observed Patler at the police station on August 25th 1967 to which counsel moved for a mistrial, which motion was overruled and defense counsel excepted. (T. Nov 29/67, Bench Conference p. 6). It is contended that all such testimonies was received in evidence contrary to the decisions in *Wade, Gilbert* and *Stovall* cases.

The Commonwealth then presented evidence from other witnesses who reported seeing a man running down Liberty Street. Among these witnesses was Glenn Fraser Hall, who in substance testified that he had come home for lunch at approximately 12:00 o'clock and had observed a man running down Liberty Street. That he went back to work and while at work he heard of the shooting in the shopping center. Mr. Hall told his wife that he didn't think that he could identify the man and that after conversation with his next-door neighbor he said that he did not think that he could identify him and that he had talked to a State Trooper and a detective from Arlington County and he told both individuals that he did not think that he could identify the man he observed

running. A few days later Mr. Hall testified that he observed 26* served *Patler's picture in one or two newspapers

and read the articles concerning his apprehension and that after reading these articles and observing the picture in the paper, he then became sure that he could identify Mr. Patler, and he so testified in Court that Mr. Patler was the man he had seen running. On the motion to set aside the verdict, counsel alleged that the admission into evidence of Mr. Hall's courtroom identification was error since the pictures and articles in the newspapers were so conducive to mistaken identification that such evidence violated the defendant's constitutional rights. (T. p. 659-680, and Motion to Set Aside the Verdict and Assignment No. 17).

None of the witnesses who testified said the man running had a gun in his hand. The Commonwealth then produced pictures depicting the area where the defendant had been apprehended which was approximately one mile from the scene of the shooting. The Commonwealth then presented evidence that a dark coat and cap were found on the front lawn of a house on Larrimore Street. The house was located approximately two homes from the end of Liberty Street. The coat and cap were turned over to Lt. Kadel who thereafter turned them over to the F.B.I. for scientific tests. The evidence further disclosed that the next day after the shooting the police found a 7.63 Mauser in a creek near a foot bridge in Bon Air Park which was turned over to the F.B.I. The Commonwealth produced evidence from a hired hand on the Highland County farm that Mr. Patler had target practiced down there in July. That he didn't know whether he had a shot gun, a pistol, or what. That he was painting the fences at the time and was not paying that much attention. (T. p. 1117).

The Commonwealth then introduced samples taken 27* from the *roof and along Liberty Street which were sent to the F.B.I. for laboratory analysis, to-wit: green and white paint samples taken from the roof; tar samples taken from the roof; footprints taken from the roof on the day of the shooting. Tar samples taken from the side wall of the building. Seventeen different sand and gravel samples which were taken from the roof, the ground below the roof, and various locations all the way down the alleged route where the fleeing subject was seen, down into Bon Air Park, near where the gun was found. The Commonwealth proceeded to introduce other evidence connecting up the chain of custody with the various samples to the F.B.I. Thereafter the Commonwealth proceeded to introduce agents from the F.B.I. to testify.

Special Agent Warren G. Johnson, the ballistics expert,

in substance testified that the 7.63 was the murder weapon and that the shells and casings found at the Highland County Farm had been fired from that 7.63. That further, he had made microscopic examinations of the raincoat and hat found on Larrimore Street, and the towel which the defendant was wearing at the time he was apprehended. That the results of those examinations disclosed no powder residue or anything else was found on the towel in the possession of the defendant or found on the coat or cap which was found on Larrimore Street (T. p. 1684-1721).

The Commonwealth called Special Agent John Walker of the F.B.I. who testified that he examined the gun for latent fingerprints and no fingerprints were found on the gun or on the bullets which were still in the gun. Commonwealth then proceeded to call Special Agent Curtis E. Thompson of the F.B.I. who was a specialist of comparisons of shoes, tires and evidence of that nature. Agent Thompson testified that he examined the latent *prints which were removed 28* from the shopping center roof on the day of the shooting with the prints made from the shoes taken from the defendant after he was apprehended and that in his opinion the prints on the roof could not have been made by the shoes the defendant was wearing on the day of the shooting. That further, the prints taken from the roof indicated two distinct sets of footprints of two different people. (T. p. 1729-1733).

The Commonwealth then called Special Agent Thomas L. Hughes of the F.B.I. who was a specialist in the soil and mineral unit in the laboratory. He testified that he made an examination of some soil and a small smear and deposit of soil which were removed from the shoes taken from the defendant on the day of the shooting. He compared samples of that soil with the seventeen samples of soil taken from the roof in the route where the man had been seen running. He stated that the samples removed from the defendant's shoes did not match any of the seventeen samples that the Commonwealth had presented for comparison. (R. 1735-1739).

Next the Commonwealth introduced Special Agent William R. Heidleman of the F.B.I. who was a specialist in analyzing paint samples, tar samples and related materials. He testified that he examined the clothing taken from the defendant under a microscope looking for the presence of foreign paint deposits and for the presence of tar deposits. That he compared the white paint and green paint samples taken from the roof and looked for the presence of such paint samples on the clothing taken from the defendant, and the hat and raincoat found by the police. That he did not find any paint deposits

on any of the items of clothing which would link them to the shopping center roof. That he found some tar on *the
29* bottom of the defendant's shoes and he compared that with tar taken from the roof but that he testified that "tar was tar" and he could not say whether it came from the same source.

The Commonwealth then called Mr. Stuart who in substance testified that he saw a man run and jump over the wall at the time of the shooting and it appeared to him that the man was 5'8" or 5'10", about 160-170 pounds and wearing a blue serge suit. (T. 1748-1750).

Commonwealth then called Special agent Morris Samuel Clark of the F.B.I. who was a specialist in the examination of hairs, fibres and fabrics and clothing. He testified that he examined the coat and hat found on Larrimore Street for laundry marks, labels, hairs or anything else that would establish ownership. That at the time he examined the coat he found in the pocket of the coat a pair of woman's pantie-hose. He testified that he examined all items and found no hairs, or anything that would connect the hat and coat or pantie-hose with the defendant or with the shopping center roof. The counsel for the defendant objected that the Commonwealth Attorney had introduced the coat into evidence knowing that the pantie-hose was in the pocket and had not informed the court or counsel of that fact. Counsel for the defendant then requested the court to allow him to call Lt. Kadel who was the first officer who received the coat to testify that he examined the coat and there was nothing in the pockets. Lt. Kadel was called and he testified that he looked through the pockets and did not find anything. (T. p. 797). Then Lt. Kadel, on re-direct, said he only looked into two pockets and not all four of them.

Commonwealth introduced evidence from witness Robert
30* ert *A. Lloyd, a Nazi Party member, who testified that he had purchased the murder gun and that he had brought the gun up to the Nazi Barracks in Arlington and that in the Fall of 1964 he loaned the gun to Patler. In early 1965 he stated that he requested that the gun be returned at which time Patler told him that it had either been mislaid or it had been stolen. (T. p. 1814). The witness testified that he had not seen the gun again until the day after Rockwell was shot when it was at police headquarters in Arlington. Other witnesses were produced by the Commonwealth who were Nazi Party members who testified as to animosity between Patler and Mr. Rockwell mostly stemming from political and organizational difficulties. There was testimony that

Patler had a similar coat and in possession of a similar pistol in 1966 when he was at Spottsylvania County at which location the Nazi's printed their literature.

The Commonwealth then called Matt Koehl who testified that on the morning of the 25th he had taken the party car and went to the post office to check the mail. That during the course of this trip he stopped to see an ex-party member who was dismissed from the party by the name of Douglas Niles. Niles was not home and he talked to his wife and called Niles at his place of employment. It developed that Niles left his place of employment and came back to his home in Arlington from Washington, D. C. Before he arrived Matt Koehl had gone back to the barracks. At approximately 11:45 a. m. Rockwell was in the upstairs portion of the Nazi headquarters. He came down the stairs and told Koehl that he intended to do some laundry and that he wanted to take the car for a short period. Koehl who was planning to distribute some literature in Washington, D. C. told him of this 31* fact and he *said that Rockwell told him that he would not be very long. At approximately 11:50 a. m., Rockwell left party headquarters and proceeded down the hill and across the street to the shopping center which was approximately 2 or 3 minutes away from the headquarters. He took his laundry into the laundromat and was at the vicinity about 6 to 8 minutes when he got into his car and the shooting occurred. The evidence further disclosed that only Koehl and four other persons at Nazi headquarters knew that Rockwell was going to the shopping center and that this was not a habitual routine of Rockwell's. In fact he rarely did his own laundry, and there was no certain time when he would go to the shopping center during the day. The evidence is undisputed that only Matt Koehl and the other people at the barracks knew that Rockwell was going to the shopping center shortly before 12:00 o'clock on August 25, 1967. (T. p. 2014-2096). Thereafter the Commonwealth closed its case and counsel for the Defendant moved to strike the evidence on the grounds stated in the record which motion was overruled and exception taken.

The defense then proceeded to present evidence which substantially indicated as follows: that on the morning of August 25th, Mr. Patler left his house at approximately 10:00 o'clock accompanied by his wife and small baby son, and driving the family automobile owned by his father-in-law. Mr. Patler did not have a driver's licence and his wife drove the car. That they stopped at a Scot gas station on Lee Highway and purchased gas and received a gasoline charge slip which

was introduced into evidence (T. p. 2168). The gas station attendant testified that the slip contained his hand-
32* writing and that he sold gas to the bearer *of the slip.

He could not identify Patler or his wife but the slip matched the car and licence plate of the defendant's automobile. The witness could not pin down the precise time the slip was given as receipt, however, he did testify that it was the sixth one in 35 for the day which would be on the morning of the 25th of August. Witnesses for the Commonwealth then proceeded to introduce evidence that after they stopped at the gas station, Patler and his wife went to a post office in Falls Church to receive mail from a post office box. The slip for the rental of the box was introduced into evidence. Thereafter the testimony indicated that the defendant returned to the residence on Lee Highway where the father-in-law went across the street to purchase some item and then returned. That the defendant and his wife then left the house again and proceeded to Fidelity National Bank to cash a check, which check was signed by and identified as John Patler's signature. The bank teller testified that she cashed the check but could not exactly pin down the time. The evidence then indicated that the defendant and his wife proceeded to a post office on Wilson Boulevard to mail a package for the defendant's father-in-law and to purchase stamps with the money they cashed the check for. The receipt for the stamps was introduced into evidence and the person who sold the stamps testified that he sold them on the 25th and it was his initials on the receipt. He could not identify the parties that he sold them to. The evidence then indicated that the defendant and his wife proceeded to the Arlington Paper Supply Company on Lee Highway for the purchase of buying envelopes. Mrs. Sharon Ann Luba testified that she knew John

Patler from previous sales and that he purchased en-
33* velopes on August 25th. That Mr. Patler came into her store *approximately 11:00 to 11:15 a. m. That he purchased an hundred envelopes which she wrote up his sales slip, which was introduced into evidence. She identified her writing and her signature on the sales slip she gave Mr. Patler when he bought the envelopes. That he was in the store approximately 15 minutes during the sale and thereafter left the store. Evidence for the defendant indicates that he then went to a Safeway store and then purchased some chicken whereafter he returned to the residence of 2522 Lee Highway. His father-in-law and his wife testified that shortly after returning he got into an argument with his wife and that he left the house at approximately 11:40 to 11:45 a. m. Further,

that the defendant did not have a car and he did not drive off in any car owned by the family. The defendant then produced further evidence that the distance from the Patler residence to the shopping center was approximately three miles. Further the evidence of the defense indicated that when Patler left the house he had a white towel around his neck and was not dressed in any dark coat but was wearing exactly what he had on when he was apprehended. Further that approximately 40 to 45 minutes after Patler left his house, Patler was arrested approximately 2 miles from his house which location was approximately 1 mile from the shopping center. Defense witnesses testified that the murder gun was seen in the possession of Lloyd during September, October and November 1965 in Richmond, when Rockwell was running for governor. This was approximately one year after Lloyd had stated that he had loaned the gun to Patler and had not seen it since 1964 until after the shooting. The defense put on further evidence of a prior attempt on Rockwell's life in July 1967 at which time two men fired a shot at

Rockwell while he was in his automobile. The *two men 34* fled and were never apprehended. The defense put on evidence that at the time of that alleged attempt the defendant, John Patler, was attending an art class in Washington, D. C. and his instructor testified. The defendant testified as to his whereabouts on the morning of the shooting and what he did up to the point of apprehension. He further testified as to his relationship with Rockwell and that he was thrown out of the Nazi party approximately four months before Rockwell was killed. On cross-examination Commonwealth attorney then attempted to introduce the fact that in 1962 the defendant had been involved with a magazine called "Kill" magazine. Upon objection, the Court refused the Commonwealth to inquire any further into what was in the magazine based on Mr. Hassan's proffer that he thought editorial comments in the magazine was proper evidence. Counsel moved to strike all evidence which had been offered concerning "Kill" magazine to which the Court overruled the objection and exception was taken on the grounds stated. (T. p. 2485-2486).

Evidence was then entered to us by the defense investigators as to the amount of time it took to leave the defendant's home at the hour testified and go to all the various locations that the defendant and his wife covered and to return home, which test run corroborated the defendant's testimony. Other trial runs were testified to by independent parties as to how much distance they could cover by running from the shopping

center along the alleged route the fleeing man was seen running, and then continue walking for a total of 25 minutes which test runs indicated that an assailant could have been well out of the area within 25 minutes of the shooting. Defense closed their case and the Commonwealth then

35* brought on several rebuttal witnesses, *one of which testified that she had seen Patler in the shopping center the day before the shooting which she said was a bright sunny day. However, the weather report in evidence indicates that it rained all day long. Patler admitted being down there several days before and had seen her on occasion that he was there. The Commonwealth then introduced testimony of Walter Kadel that the defendant's father-in-law had made an inconsistent statement during the course of an illegal search at the residence, to the effect that Patler had left the house at 11:00 o'clock. Counsel moved that the statement be ruled inadmissible because it was the fruit of an admitted and stipulated illegal search. (T. p. 2654 as to stipulation, T. p. 1714 and T. Nov 24/67 p. 214-231). Thereafter Commonwealth closed its case and Instructions were argued, exceptions taken to various Instructions and as indicated by the Assignment of Errors, the closing Arguments were made and the jury retired bringing back a verdict of guilty with a sentence of 20 years.

VII. ARGUMENT

1. *Was the evidence sufficient to support a verdict?*

The evidence in the instant case though wholly circumstantial has to be taken in the most favorable light to the Commonwealth, in considering the sufficiency of the evidence. It is well settled that if the proof relied upon by the Commonwealth's office is wholly circumstantial, as it here is, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence, and they must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. To accomplish that the chain of 36* necessary circumstances must be unbroken and the *evidence as a whole must satisfy the guarded judgment that both the *corpus delicti* and the criminal agency of accused had been proved to the exclusion of any other rational hypothesis and to a moral certainty. (*LaPrade v. Comm.*, 191 Va. 410, 418). Further, the evidence must be not only consistent with the guilt of the accused but inconsistent with his

innocence. Further where facts are established which are susceptible to two interpretations, one of which is consistent with the innocence of the accused, the jury or the judge trying the case cannot arbitrarily adopt the interpretation which incriminates him. Suspicion of guilt is not sufficient. It must be shown beyond a reasonable doubt that the accused is the criminal agent. (*Williams v. Comm.*, 193 Va. 764, at p. 772). In the instant case the Commonwealth established that Rockwell was shot at approximately 11:58 a. m. on the 25th day of August, 1967, from the shopping center roof. The question then comes down as to whether the evidence establishes beyond a moral certainty that John Patler was the criminal agent. The facts are uncontradicted that only the people in Nazi headquarters knew that Rockwell was going to the shopping center shortly before 12:00 o'clock on August 25th. It is further uncontradicted that Rockwell had been gone only a period of 8 to 10 minutes before the shooting occurred. Further that whoever did the shooting threw the gun away in Bon Air Park which gun was found the following day.

The F.B.I. testified that the two footprints found on the roof and compared with the shoes taken from Patler shortly after his arrest definitely did not match. That none of the traces of the paint samples from the roof was found on Patler's clothes or shoes. That tar was found on the bottoms of Patler's shoes *but that the tar on his shoes could not be said to have come from the roof of the shopping center. That soil samples taken from Patler's shoes did not match any of the seventeen samples collected by the police from the roof and along the alleged escape route. That Patler's clothes did not contain any other residue or any indications of a gun had been secreted in the pockets or anywhere near the clothes. That the coat and hat found by the police near the scene of the crime did not contain any paint or tar samples, or any hairs, laundry marks or any other item connecting the coat to Patler or to the roof of the shopping center. Further the woman's panty-stocking found in the pocket of the coat did not contain any hair samples or any other matter which had any evidentiary value in connecting Patler to the coat or to the scene of the crime. That evidence was introduced showing that on the Highland County farm where Patler spent a great deal of time which was owned by his father-in-law, bullets and bullet casings from the murder gun were found in a pasture in back of the house. That Patler had been seen target practicing in back of the house by a hired hand but it was not determined what type of a gun he

was using on that occasion. Defense testimony indicated that members of the family target-practiced back there frequently with several guns they had at the house, which was corroborated by Commonwealth testimony that there were other holes in other trees in the area where the slugs were found. There was no evidence as to when the bullets may have been put into the trees and no effort made to determine this fact. Evidence was introduced that the murder gun was owned and purchased by a Robert Lloyd who testified that in 1964 he loaned the gun to Patler who thereafter told 38* him that it was mislaid or stolen. Further Lloyd testified *that he had not seen the gun again until after the shooting in August 1967. The Commonwealth produced evidence that Patler owned a similar looking coat to the one that was found near the scene of the crime. No evidence was introduced connecting the hat to Patler. The Commonwealth introduced evidence of prior disagreements and ill feeling between Patler and Rockwell stemming from differences concerning the Nazi party. Commonwealth further introduced evidence that the defendant had been thrown out of the Nazi party in April 1967. The evidence indicated that the prior attempt to shoot Rockwell had taken place in July 1967 by two individuals who were not apprehended. It was shown that Patler was attending an art class in Washington, D. C. at the time of the alleged attempt. The evidence is un rebutted as to Patlers whereabouts on the morning of August 25th and that he ran many errands and merchants testified that he came into their store at 11:00 or 11:15 and stayed 15 minutes. That further, that he left his house at approximately 11:40-11:45 a. m. that morning, some 8 to 10 minutes before the shooting took place.

Two individuals had chased the fleeing subject but could not identify the subject other than he had dark clothes and dark hair. Other witnesses who observed the fleeing subject said there was Mexican or Spanish descent, some said that he had on yellow socks, another said that he saw the subject leave the shopping center and leap over a wall and it appeared to him that the man had on a blue serge suit. The Commonwealth introduced three identification type witnesses, the first being Mrs. Kilpatrick, who in substance testified that the man she saw coming off the wall in back of the shopping center looked something like what Mr. Patler looks like. 39* She testified that she picked out *pictures of other people other than Patler, that she was brought to the courtroom on two occasions for identification purposes the first time she said that she didn't see him, and the second time she saw him and said maybe no, maybe yes. The next witness,

Mrs. Thoburn, testified that she observed Patler in the police station when he was walked by her for identification purposes in the company of detectives and that shortly thereafter she gave a statement to the police that Patler's features were not inconsistent with the man she had seen running. The next witness, Mr. Hall, testified that he observed a man running, that he had told his wife after he learned of the Rockwell shooting that he did not think he could identify the man, that he told an Arlington Detective that he could not identify the man, and that he told a State Trooper that he could not identify the man, and that he had discussed it with his next-door neighbor and told him that he did not think that he could identify the man but after seeing Patler's picture in the paper, came to the conclusion that he could identify Patler and he testified that in his opinion Patler was the man he saw running. Viewed in the light of his first impressions where he informed four different people that he could not identify the man he had seen running, coupled with the fact that he had observed Patler's picture in the newspaper and had read articles concerning the shooting and the apprehension of Patler cast serious doubt as to whether his testimony, and his testimony alone, establishes that the man running was in fact, the defendant. As Mr. Justice Frankfurter once said, "What is the worth of identification testimony even when uncontradicted. The identification of strangers is proverbially untrustworthy. The hazards of such testimony are established by a formidable number *of instances in the records of English and American trial." *U. S. v. Wade*, 376 U.S. 23, 87 Sup. Ct. 1926, p. 1933.

Perhaps, the most serious gap in the chain of circumstances was the complete absence of any evidence which connected the man running with the crime. No one ever saw any weapon in his hand and no evidence was produced that was connecting it with the defendant's clothing.

It is further equally plausible that who ever made the footprints on the roof did the shooting and escaped unnoticed.

Therefore it is contended that the evidence falls far short of establishing the necessary chain of circumstances beyond a moral certainty.

2a. Should the Court have allowed the Commonwealth and Defense to question each member of the jury panel separately and outside the presence of other members of the panel?

Section 8-199, Code of Virginia, as amended in 1966, states that: "The Court or counsel for either party may examine on

oath any person who is called as a juror therein and may ask such person or juror directly any relevant question to ascertain whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice there”

It is clear the statute now allows counsel to examine each juror and ask any relevant question to ascertain if the juror stands indifferent to the cause. The statute does not preclude questioning jurors outside the presence of other jurors. Further questions to the entire panel could convey information to the whole panel that would prevent them from being impartial and may act as a sword rather than shield. *Hope Windows v. Snyder*, 208 Va. 489, 1968). The entire panel with the exception of one person acknowledged that they had read newspaper, and heard and saw radio and television commentaries concerning the shooting and *further, six members of the panel had discussed the facts reported in the press or other media with relatives or friends. The Court refused to allow counsel to question regarding knowledge of information reported through the news media on the apparent theory that such information may have prejudiced the entire panel.

If each juror had been questioned individually the panel could not have been prejudiced. It would seem nothing could be more relevant in determining whether a juror was impartial than a determination of what facts read in the newspaper he believes to be true. While every case does not require such a procedure, it is contended that it was an abuse of discretion to refuse to adopt this procedure in this case. Further, both the Commonwealth and the defendant moved the Court to question jurors separately.

2b. *Should the Court have allowed counsel for defendant to examine members of the panel if they had expressed or formed any opinion against the Nazi Party or members therein?*

The evidence disclosed that George Lincoln Rockwell was the leader of the Nazi Party; that Patler had been a member of the Nazi Party for a number of years and that many members of the Nazi Party were to be called as witnesses in the case. One juror volunteered that he had strong feelings regarding the organization of which the defendant was a member (T. p. 15). That another juror stated, “It was a hate organization” (T. p. 44). The Court refused to allow counsel to ask other members of the panel as to any bias or prejudice

against the Nazi Party. The Court ruled that counsel could only ask questions concerning feelings, against the defendant. It is contended that this was unduly restrictive and prejudicial to a fair determination of defendant's right to an impartial jury. If Patler's membership in the party was not 42* in issue and the *alleged crime was independent of his association with the Nazi party then perhaps the relevancy of the question would be an issue. But in the instant case the Commonwealth went to great extremes to detail Patler's activities in the party and dismissal from the Party during the trial. It is apparent that a person's background and associations may affect the issue of credibility. Certainly if a juror had prejudicial feelings about an organization as notorious as the Nazi Party, it is inconceivable that the same juror would not have prejudicial feelings about a member therein. In any event, the ruling of the Court prevented any determination of such an issue.

2c. Should the Court have allowed counsel to examine the panel concerning discussion or opinions expressed concerning radio, television and newspaper coverage concerning the case and struck for cause jurors who had expressed an opinion?

Nineteen out of twenty people indicated they had read about the case in newspapers, or heard it discussed on television and radio (T. p. 40-41). Six said they had discussed what they heard with relatives or friends. (T. p. 42-43). Counsel then started to ask each of the six jurors who had stated they had occasion to discuss the facts with other people or immediate family whether they had mentioned any opinion regarding the case. Objection was sustained by the Court on the ground that the Court had asked if any member of the panel had expressed any opinion concerning the probability of the guilt or innocence of the defendant and all remained silent Counsel contends that if silence on the part of the jury is conclusive of that issue, the statute giving defense counsel the right to examine on that issue is meaningless. 43* However, it is contended that counsel has a right to *elicit information which may demonstrate prejudice in spite of silence on the part of the jury where general questions have been asked by the Court. The Court's ruling effectively precluded any attempt by counsel to demonstrate whether jurors had previously received prejudicial information through the news media. The goal of *Voir Dire* is to obtain impartial jurors not to prevent relevant questions that may uncover prejudice of a juror.

3. *Did the Court err in refusing to suppress bullet slugs and casings seized under an illegal search warrant at the defendant's Highland County residence?*

Trooper C. L. Bradley swore to an affidavit and secured a search warrant to search the defendant's residence in Highland County, Virginia. A motion to suppress was filed alleging the insufficiency of the affidavit and other grounds. After hearing evidence the Court ruled the affidavit was insufficient and the search warrant was illegally issued. (T. Nov. 24/67, p. 203-207. The Court then granted the Commonwealth leave to produce evidence that the items found were not within the curtilage of the property. The evidence indicated that Trooper Bradley along with Arlington Detectives entered upon the property and parked their cars next to the house. A copy of the warrant was posted on the door of the house since no one was home. They talked to a hired hand next to the house and then proceeded to search behind the house and out into the pasture where they found the casings on the ground and bullet slugs in a tree. They filled out the return on the search warrant listing the items seized, and left the property.

The defendant contends that the search was illegal in its inception and that all items seized was a fruit of the
44* primary *illegality and should have been suppressed. The test of excludibility in such a case is,

"Whether, granting establishment of the primary illegality, the evidence to which objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint".

Wong Sun v. U. S., 83 S. Ct. 407, 417 (1963)

The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion. Nor do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence. *Wong Sun v. U.S.*, p. 416, *supra*.

If applying the exclusionary rule in the instant case, it is significant that Trooper Bradley testified that he would not have conducted any search if he had not secured the search warrant. (T. p. 295). It is apparent from the testimony that at all times the officers were acting under color of the warrant during the entire search. They entered upon the property, parked their cars next to the house, posted the search war-

rant on the door of the house and recorded what they seized on the search warrant return. Only after the affidavit was ruled insufficient did the Commonwealth attempt to justify the seizure by producing evidence that the items seized were not within the curtilage and thus not protected property.

Further, there is nothing in the record to support the proposition that the items in dispute were seized by any means independent of the search warrant. The Commonwealth sought to rely on *McClannan v. Chaplain*, 136 Va. 1 (1923), which was a civil case wherein a police officer entered 45* into land at a place remote *from the curtilage to search for a still. The officer had no search warrant. The Court held that the search was not unreasonable since the entry was at a place remote from the curtilage. This case can be distinguished on its facts from the present case where the officers entered upon the curtilage under color of an illegal warrant.

The Court based its ruling on the fact that the property seized was not within the curtilage. "The curtilage of a dwelling house is a space necessary and convenient, habitually used for family purposes and the carrying on of domestic employment; the yard, garden or field which is near to and used in connection with the dwelling". *Bare v. Comm.*, 122 Va. 783, 795.

In the instant case the evidence indicated that the area where the casings and bullets were found was habitually used by the family for many purposes; i. e.: the children played there, the family frequently ate in that area, and a tree house was built there for the children. The distance at most from the house was 200 - 250 feet and it was an area in plain view of the house.

It is contended that the Court's ruling that such area was outside the curtilage was contrary to the facts and further the Court's ruling used an unrealistic test in determining the area was outside the curtilage.

Thus it is claimed the evidence should have been suppressed as the fruit of the illegal search warrant and further the Court's finding that the search warrant did not control the seizure of the items in question was error.

4. *Did the Court err in refusing to strike the Courtroom identification of Mrs. Alma Kilpatrick?*

Counsel for the defendant had requested that the 46* Commonwealth proffer if identification witness had attended any line-up or show-up so that a *voir dire* could

be conducted to determine if any courtroom identification should be stricken. The Commonwealth refused to proffer any testimony and proceeded to call Mrs. Alma Kilpatrick to the stand who proceeded to testify that she was in the shopping center at the time of the shooting and that she saw a man come off from the wall by the rear of the building and run by her car. She testified when asked if she could give a description that: "I believe that he was dark haired and he had either a brownish or dark brown coat on, and he looked something like what Mr. Patler looks like"

Question: "Where did you see Mr. Patler again?"

Answer: "I saw Mr. Patler again in the courtroom." (T. p. 523)

Shortly thereafter counsel approached the bench and asked what courtroom she was referring to. Whereupon the Commonwealth attorney said she was in the courtroom on the bond hearing and again at the preliminary hearing. On both occasions she was brought to the courtroom solely to view the defendant. (T. p. 3 bench conference). On *voir dire* of the witness she related that she had talked to the detectives the day after the shooting and she was shown pictures in a shopping center where she met them and in the police station shortly thereafter. Further she had picked out two pictures of people other than the defendant (T. p. 534). She was brought to the courtroom on the bond hearing for the sole purpose of viewing the defendant. On this occasion she did not identify the defendant. She said she didn't see him. (T. p. 540-547). She was brought to the courtroom on another occasion for the sole purpose of viewing the defendant. On the second occasion when asked if she could identify 47* the defendant she said: "I wouldn't say no and I wouldn't say yes". (T. p. 542). Thereafter she left for Washington State and while out there she said she decided she would say yes. (T. p. 542-543). Then she changed her mind decided she just wasn't sure. (T. p. 543).

She further testified on *voir dire* that she knew who she was supposed to be looking for in the Courtroom, "Simply because I had seen a picture". (T. p. 548).

Neither the defendant nor counsel was ever notified of either show-up. Counsel moved to strike her courtroom identification which motion was denied and exception taken (T. p. 549-552).

It is contended that the Courtroom identification of the

witness was admitted into evidence in clear violation of the *Wade*, *Gilbert*, and *Stovall* decisions, 87 S. Ct. 1926 (1967).

Certainly the vice in the instant case was more serious than that chastized in the *Wade* decision. Here the witness picked pictures of persons other than the defendant, attended two courtroom show-ups, the second of which was arranged after the witness failed to identify the defendant the first time. Then on the second occasion her identification consisted of "I wouldn't say no, I wouldn't say yes". Thereafter she substantially changed her mind and decided to say yes. Then she changed her mind again and said she couldn't be sure. Then she testified that the man looked something like what Mr. Patler looks like.

Under *Wade*, the Commonwealth has the burden of establishing by clear and convincing evidence that the in-court identification was based on observations of the suspect other than the line-up identification, if the showup or lineup was conducted without notice to the defendant and without 48* notice to counsel. *U. S. v. *Wade*, 87 S. Ct. 1926, 1939 (1967).

In the instant case the witness hadn't made any identification at all until well after she attended both courtroom showups. It is significant that the Court commented that if it concluded that Mrs. Kilpatrick's testimony was not admissible probably a mistrial would have to be ordered. (T. Bench Conference Nov 29/67 p. 5). Certainly this unsolicited remark indicates the admission of the testimony was not harmless.

It is submitted therefore that the admission of Mrs. Kilpatrick's testimony was prejudicial error.

5. *Did the Court err in (1) allowing Mrs. Thoburn to testify to identification statements she made to the police at the police station during an illegal lineup or showup and (2) refusing to grant a mistrial when she testified she saw Patler at the police station on August 25th?*

The Commonwealth called Mrs. Thoburn to testify as an identification witness. On *voir dire* it was shown that on August 25, the witness had attended a one-man lineup or showup of the defendant at the police station. Mrs. Thoburn was seated in the hall of the police station with other witnesses. The defendant was walked by the witnesses in handcuffs, accompanied by detectives. No other lineup with other persons was conducted, and no notice to the defendant or to counsel was given of the showup. The witness testified that

immediately after the viewing she gave a statement to the police "that there was nothing conflicting about the appearance of the man I saw to John Patler" (T. p. 592). The witness then testified that she would have to say yes if asked if John Patler was the man she saw running. (T. p. 609). The

Court sustained counsel objection to allowing Mrs. Thoburn to make an *in court identification on the ground that she had substantially changed her testimony since the illegal viewing which testimony could only have been done through hindsight.

The Court then ruled that she could testify as to what she told the police immediately after the illegal viewing to which counsel objected and excepted. (T. p. 622-626).

The Court further instructed Mrs. Thoburn that she could not testify in front of the jury that she had attended the showing at the police station on August 25. (T. p. 626). The jury was recalled and over objection Mrs. Thoburn testified as to what she allegedly told the police immediately after the illegal viewing. Then she proceeded to testify that she saw Patler at the police station on August 25 in plain violation of the Court's admonishment. Counsel moved for a mistrial which motion was overruled and exception taken. (T. Bench Conference Nov 29/67, p. 6) (T. p. 630-631).

It is contended that the admission of the line-up identification testimony was plain error and that the Court erred in refusing a mistrial based on Mrs. Thoburn's testimony that she observed Patler at the police station on August 25, 1967.

The *Wade*, *Gilbert* and *Stovall* decisions are clear that if the prosecution makes use at trial of lineup identification either in place of courtroom identification or to bolster in a harmful manner courtroom identification reversible error is committed. *U. S. v. Wade*, *supra*, at p. 1943. Further the State is not entitled to an opportunity to show that the testimony had an independent source. Only a *per se* exclusionary rule as to such testimony can be an effective sanction to assure that law enforcement authorities will respect the accused's constitutional right to the presence of his counsel at the critical lineup stage. **U. S. v. Gilbert*, 83 S. Ct. 1951, 1957.

Further the testimony in the instant case is the direct product of the illegal lineup "come at by exploitation of the primary illegality". *Wong Sun v. U. S.*, *supra*, *Wade v. U. S.*, *supra* *Gilbert v. U. S.*, *supra*.

It is contended that since the lineup was ruled illegal and the courtroom identification was stricken the prior out of court declaration of the witness should not have been allowed

to rehabilitate the witness. Further the testimony was a product of and directly related to the illegal viewing. Lastly the witness made it perfectly clear to the jury that she had observed the defendant at the police station on August 25 and a mistrial should have been granted since such testimony was given in plain violation of the Court's admonishment.

6. *Did the Court err in refusing to require the Commonwealth Attorney to proffer whether identification witnesses had attended lineups conducted without notice to the defendant and counsel?*

In *U. S. v. Wade, supra*, the Court states where a lineup is conducted without notice to the defendant and without notice to counsel an in court identification should be struck, unless the Government can "establish by clear and convincing evidence that the in-court identifications were based upon observations of the suspect other than the lineup identification"; at p. 1939. Clearly the burden of proof is on the Government to establish the courtroom identification was not tainted by the lineup procedure.

Prior to any identification witnesses being called counsel requested a *voir dire* hearing be conducted. (T. Nov 26/67,

Bench Conference p. 7; T. p. 480-484). The Commonwealth proceeded *to call Mrs. Kilpatrick and knowing that she had been brought to Court on two occasions for the sole purpose of viewing the defendant proceeded to allow her to testify to an identification. Mrs. Kilpatrick then volunteered that she had seen Mr. Patler in the Courtroom. Counsel approached the bench and the Commonwealth stated he expected her to say she had observed Patler on T. V. A *voir dire* was conducted and it developed that she had made two courtroom viewings.

On the next identification witness, Mrs. Thoburn, counsel did not know who the witness was and requested the Commonwealth to proffer if she had attended any lineups and particularly if the witness had attended the showup at the police station. The Commonwealth attorney responded—"No proffer" (T. Nov 29, 2, p. 4). The Commonwealth went on to say "I am not going to submit my case on pretrial, on every witness for the type of thing this last witness was put through by Mr. Harrigan".

Mr. Harrigan: "I object your Honor"

Mr. Hassan: "I do not intend to have any pre-examination, preliminary hearing of every testimony of every witness . . . I hope this case is appealed to protect the Commonwealth".

Counsel then moved that the Court require the Commonwealth to proffer whether the witness was going to discuss identity and whether she attended any line. The Court denied the motion and exception was taken (T. Nov 29, #2, p. 6).

Counsel again on the testimony of Miss Middleton requested a proffer since this witness had made a positive identification at preliminary hearing at which time on cross-examination she admitted she never saw the man's face who was running

but had attended a viewing at the police station. The 52* *Commonwealth responded to this request:

Mr. Hassan: "This is for the birds" (T. Nov 29, #2, p.7)

Then the Commonwealth refused to ask the witness whether she could identify the defendant.

Counsel contends that the procedure followed by the Court placed the defendant in a position of objecting in the middle of the witnesses testimony when the issue was obviously identification testimony. That under the mandate of the *Wade, Gilbert & Stovall* decisions the Court should have required the Commonwealth to proffer whether any viewings took place before the witness got up to the point in their testimony concerning identifications. Clearly if Mrs. Kilpatrick had not volunteered that she observed Mr. Patler in the courtroom, counsel may never have discovered such fact.

Thus counsel contends the procedure followed in the instant case was prejudicial and contrary to the plain mandate of *Wade, Gilbert and Stovall*.

7. *Did the admission of identification testimony of Glenn Hall which was predicated on newspaper articles and pictures violate defendant's constitutional rights?*

Hall testified that he saw a man run down the street. However, he was not aware that anything had happened and proceeded into his house and went back to work. Later that afternoon he found out Rockwell had been shot. Later he told his wife, his next-door neighbor, a detective and a State trooper that he did not think he could identify the man. A day or two later he observed Patler's picture in the newspaper and read the articles concerning his apprehension. As a result of the pictures and articles Mr. Hall identified Patler as the man running.

53* *In *Simmons v. U. S.*, decided March 18, 1968, the test is that convictions based on pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly

suggestive as to give rise to a very substantial likelihood of irreparable misidentification. See also, *Stovall v. Denno*, 388 U. S. 293, 301-302.

In the instant case the witness had expressed and had repeated to several people his inability to identify the person running. He never attended any proper lineup.

Further nothing could be more suggestive than a suspect's picture coupled with the details of his apprehension. On the motion to set aside the verdict counsel assigned the admission of such testimony as error, which assignment was overruled and exception taken.

The release of the pretrial publicity in the instant case coupled with identification testimony predicated on that publicity on its face demonstrates a suggestiveness conducive to irreparable mistaken identification. Therefore, under the factual situation surrounding the introduction of this testimony the Court should have ruled the testimony was improper and granted a new trial.

At the very least the Court should have warned the jury that the identification testimony should be received with caution and granted defendant's Instruction No. W. *Comm. v. Kloiber*, 378 p. 412.

8. *May an oral statement acquired in the course of an illegal search of defendant's residence from a witness be used in rebuttal to impeach the witness?*

Counsel moved to suppress the rebuttal testimony of 54* a *conversation the detective allegedly had with the defendant's father-in-law, Sam Ervin, during a search of defendant's home. Counsel alleged that the search was illegal on the grounds that (1) the affidavit was insufficient to support the search warrant, and (2) the Commonwealth stipulated the search was illegal and agreed to return all evidence seized. The issue then turns on whether a policeman may testify in rebuttal to an inconsistent statement of a witness when such statement was acquired during an admitted illegal search. The leading case concerning this point is *Walder v. U. S.*, 347 U. S. 62 (1954), where the defendant went beyond denial of complicity in the crime in issue and made sweeping claims that he never dealt with or possessed narcotics. The Court allowed impeachment based on evidence illegally seized on another occasion independent of the crime for which defendant was on trial. The ruling allows impeachment on sweeping collateral claims but not on matters which may tend to prove the case in chief. The rational is thus

based on the fact that the impeachment affects only the credibility of the witness and does not tend to prove the case in chief.

In *Inge v. U. S.*, 356 F2 345 (1966), the U. S. Court of Appeals for the District of Columbia in interpreting the Walter case said: inadmissible statements can be used only when the defendant makes sweeping claims that go far beyond the crime charged. In this case the Court refused to allow impeachment of the defendant on inadmissible statements concerning the crime in question.

In the instant case statement of a witness was used which directly pertained to defendant's alibi. The prejudicial effect of such statement far outweighed its value for mere impeachment purposes. Certainly the Commonwealth could not
55* have used the *statement in its case in chief since it was the product of the illegal search and the policies of the exclusionary rule apply to verbal as well as physical evidence. *Wong Sun v. U. S.*, 83 S. Ct. 407, 416.

Thus the Court should have ruled the testimony inadmissible.

9. *Did the Court err in refusing to require the Commonwealth to produce all exculpatory evidence and other evidence helpful to the defense prior to trial?*

The defense filed a pre-trial motion entitled, Combined Motions for Discovery and Inspection Issuance of *Subpoena Duces Tecum* and Disclosure of All Exculpatory Material and Information (R. 21-25). The Court overruled the motion in each and every one of its parts and ruled that the Commonwealth had a duty to produce exculpatory evidence, *but only at trial* (underlining supplied). A memorandum and points of authorities was filed in support of said motion. It is apparent from the ruling that the Court found all exculpatory evidence should be produced. The issue then is should the Commonwealth be required to produce such evidence prior to trial.

The leading case on production of exculpatory evidence is *Brady v. State of Maryland*, 83 S. Ct. 1194, 373 U. S. 83 (1963) which stated: "We now hold that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or to punishment irrespective of the good faith or bad faith of the prosecution" . . . A prosecution that withholds evidence on demand of an accused, which if made available would tend to exculpate him or reduce the penalty helps

shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though as in the present case his action is not "the result of guile" to use the words of the Court of Appeals.

In *Barbee v. Warden*, 331 F.2d 842 (4th Cir) at 846, the Court said: "in gauging the nondisclosure in terms of due process the forces must be on the essential fairness of the procedure and not on the astuteness of either counsel . . . Failure of the police to reveal such material evidence in their possession is equally harmful to a defendant whether the information is purposely, or negligently withheld. And it makes no difference if the withholding is by officials other than the prosecutor . . ."

The Court went on to quote an earlier case, *Griffin v. U. S.*, 336 U. S. 204 (1949), that disclosure of all evidence reasonably considered admissible was required adding.

" . . . the prosecution is not to decide for the Court what is admissible or for the defense what is useful".

In the instant case the Courts ruling was directly opposite the spirit and intent of the above cases. The ruling cast the prosecutor in the role of architect of the proceedings. The Commonwealth put defense in a position of objecting time after time to chain of custody of items that were sent to the F.B.I. for scientific evaluation. The F.B.I. agents testified and all of their testimony proved to be favorable to the defense and exculpatory in nature. i. e. prints from Patler's shoes did not match either set of prints found on the roof—dirt from his shoes did not match any of the seventeen samples taken from the roof and along the alleged escape route, paint samples were not found on his clothes, etc.

Witnesses who attended lineups were not proffered as requested in the motion or at trial.

Further the ruling let the prosecutor decide what was exculpatory in nature in plain violation of the *Barbee* decision, *supra*.

Then the prosecutor argued that all such evidence was put on by him in the spirit of fairness but that it was negative and proved nothing.

It is contended that a procedure such as this bears heavily on the defendant and shapes a trial so that such evidence could be put on in the least effective method.

Further the ruling precluded the defense from preparing its case and leaves the defense at the mercy of the prosecuting

officials with no opportunity to determine if all exculpatory evidence has been produced.

Further many of the exhibits offered could have been stipulated had the F.B.I. testimony been disclosed prior to trial. Certainly no danger existed that such reports could have been tampered with. They gave us no valid reason for not disclosing much of the information requested except the "trial by ambush theory".

Thus it is contended the ruling of the Court was a violation of due process.

10. *Did the Court err in allowing telephone conversations recorded shortly after the shooting on police dispatcher tapes to be played to the jury?*

Defense alleges that the playing of the tapes was hearsay. Some of the calls were from unknown sources and many were hearsay upon hearsay. Further the callers had time for reflection which negates their admission as a spontaneous utterance. (T. p. 1526) (T. Dec/67 #2, p. 4).

58* *11. *Did the Court err in admitting into evidence circumstantial evidence which did not support any reasonable inference as to defendant's guilt, to-wit: coat, woman's panty-stocking?*

The Coat was never shown to or identified by any witness who saw a man running. The F.B.I. testimony did not link the coat as being near the gun or the shopping center roof. In fact the descriptions ranged from brownish to black to blue serge suit. Certainly the testimony of the witnesses and the F.B.I. did not establish a valid inference that the coat was used by the person who did the shooting. Testimony indicated that Patler had a similar coat approximately one year before the shooting at Nazi headquarters. Thus it is contended the admission of the coat allowed the jury to speculate as to its evidentiary value.

The panty-stocking found by the F.B.I. lab technician in the coat pocket had even less evidentiary value. It was never connected to the roof, the running man, the defendant or the crime. In fact no explanation was made why it was first discovered at F.B.I. headquarters. Then after its admission the Commonwealth argued on closing argument that the reason the running man was described as Mexican or Spanish is that he had the stocking over his face. Counsel contends the admission failed to support an inference of guilt.

12. *Did the Court err in admitting Exhibit 5-G into evidence?*

Exhibit 5-G was a letter from Patler to Rockwell which counsel alleges had no probative value at all. In fact it indicated that Patler was fooling around with another woman. The prejudicial effect far outweighed any value that the letter may have inferred of any disagreement between Rockwell and Patler. Therefore the letter should not have been admitted.

59* *13. *Did the Court err in refusing to grant a mistrial for prejudicial remarks made by the Commonwealth attorney which remarks were deliberately audible to the jury?*

Counsel approached the bench to object to testimony concerning certain evidence. (T. p. 780 and T. Nov 30/67 Bench Conference p. 2-8). The following statements were made and audible to the jury:

Mr. Hassan: "This is fantastic. This gets to be ridiculous, these bench conferences."

Mr. Harrigan: "I object to these comments".

Mr. Hassan: "You object to everything and I couldn't care less."

Court: "All right gentlemen".

Mr. Morris: "We request that the jury be sent out..."

Mr. Hassan: "Do you want to take me out someplace, fine."

Mr. Harrigan: "I move for a mistrial because the remarks are uncalled for and prejudicial."

Court: "I don't believe the jury can hear you"

Mr. Harrigan: "They're laughing. I want the record to show that the jury thinks there's something very funny."

Court: "Let the jury retire"

Later the Court instructed the jury to disregard remarks if overheard at the bench conference (T. p. 780).

Counsel maintains that the remarks were prejudicial and made for the purpose of ridiculing counsel for the defense and that the Court's instruction did not cure the error.

60* *14. *Did the Court err in conducting the over due examination of 8 year old Christine Freeman in the presence of the jury?* (T. 802-806)

Clearly the determination whether an infant is competent to testify is left to the discretion of the trial judge. *Carpenter v. Comm.*, 186 Va. 851. However, counsel maintains that the preliminary examination should be conducted outside the presence of the jury since the Court and not the jury determines competency in the first instance. In the instant case, counsel was forced to object in the presence of the jury and object to the *voir dire* in the presence of the jury. This could lead to an inference by the jury that counsel was trying to suppress the infant's testimony for some unknown reason. Even though the objection was sustained the probable prejudicial effect of the procedure was not cured.

15. *Did the Court err in allowing Detective Faulconer to testify as to his opinion that the reason he put handcuffs on the defendant was that he was similar to the subject on the police radio?*

The question was asked: "Why did you put handcuffs on him?" (meaning Patler). Answer: "He was similar to the subject of the communication on the radio."

The motion was made to strike the answer as an opinion of the witness and to strike the question to which the Court overruled. Exception was taken. (T. 815-817).

Perhaps the point is not of major significance but it demonstrated an obvious attempt by the officer to embellish and tie the defendant in as the man fleeing the scene of the shopping center. The detective knew that the only description on the radio was for *a man of Mexican or Spanish descent 61* wearing dark clothes and yellow socks. Patler had a yellow shirt on and dark socks and is obviously not Mexican or Spanish. The obvious attempt to prejudice the defendant was later demonstrated by the subsequent testimony of the same detective in response to a question: "What was his appearance?" Answer: He had been running", which the Court told the jury to disregard after objection. (T. p. 818). Such obvious, deliberate use of prejudicial and inadmissible testimony should not be allowed.

16. *Did the Court err in refusing Instruction W. dealing with testimony of identification witnesses?*

Instruction W was the only instruction on testimony of identification witness. In *Comm. v. Kloiber*, 378 Pa. 412, 106 A2d 820, "Where eyewitness was not in a position to clearly observe defendant, or is not positive as to identity,

or his positive statements as to identity are weakened by qualification or by failure to identify defendant on one or more prior occasions, accuracy of identification is so doubtful that Court should warn jury that testimony as to identity must be received with caution."

In *Wade v. U. S.*, 87 S. Ct. 1926, 1940 (1967), the Court sets out various factors for the Court to consider in striking courtroom identification. These same factors were incorporated into Instruction W on the theory that if the Court utilizes those factors in weighing identification testimony, there is no sound reason why the jury should not be made aware of the same factors in evaluating identification testimony.

17. *Did the Court err in refusing Instruction T?*

Evidence was presented by the defense that two men had shot at Rockwell approximately one month before he was killed. Further evidence indicated that Patler was attending an art class in Washington, D. C. at the time of that attempt. Rockwell received many other threats on his life. In fact, the testimony of Matt Koehl indicated they were commonplace.

Further the Commonwealth's own evidence proved two footprints other than Patler's were found on the roof and that the day before it rained all day which supports the inference they were put there on August 25th.

Based on this evidence counsel contends the Instruction T was supported by the evidence and should have been given.

18. *Did the Court err in refusing Instruction P?*

Counsel concedes Instruction P is not favored by the Court.

19. *Did the Court err in refusing Instruction J?*

Counsel contends that he was entitled to instruct the jury that the term "not guilty" also encompassed not proven and that said instruction was a correct statement of the law.

20. *Did the Court err in refusing Instruction H?*

This instruction informed the jury that where alibi is a defense, the burden is still on the Commonwealth to prove presence of the defendant before the defendant has any bur-

den to establish a reasonable doubt though an alibi defense. *State v. Lowry*, 42 W. Va 205, 24 S. E. 561

Instruction G instructed the jury that the Commonwealth had to prove presence of the accused but it did not instruct the jury that such fact must be proven before defendant had any burden to establish as alibi.

21. *Did the Court err in refusing Instruction F?*

Instruction F was taken from §106-01 of Virginia Jury Instructions. The Court granted Instruction 5 for the 63* Common-*wealth which was taken from §106.02 of Virginia Jury Instructions. Since the chain of the defense was that defendant could not have been at the scene under the theory of defendant's case, it is contended that the defense was entitled to an instruction in his own language concerning this aspect of the case. The form of the instruction was taken by the authors from the language and instructions in *Noblett v. Comm.*, 194 Va 241, 72 S. E. 2d 241, 245.

22. *Did the Court err in refusing Instruction E?*

Defense requested this instruction based on the detention of the defendant at the police station for several hours prior to his being taken to the special justice. Further the defendant was not notified of the crime for which he was charged until several hours after his apprehension. He was merely informed he was held on a felony. If defendant had been immediately taken to a special justice and informed of the charge he could have arranged to have someone check his alibi witnesses immediately and thus pin down his alibi testimony with the various witnesses. If the witnesses would have been questioned that day they may have been able to remember the defendant and the time they saw him. This instruction has been most often used in drunk driving cases, however, it is contended the principal is applicable to the instant case.

23. *Did the Court err in refusing Instruction C?*

Instruction C was on presumption of innocence. More important it instructed the jury that the presumption goes with the accused throughout the entire trial. Instruction B which was a similar instruction granted by the Court did not cover that the presumption attaches to defendant until re- 64* pelled by proof. Thus *this instruction should have

been granted in addition to or in lieu of Instruction B. *Lee's, The Criminal Trials in the Virginias*, §620, p. 398.

24. and 25. *Did the Court err in refusing Instructions I and also Instruction I-1?*

Instruction I instructed the jury as to the law of the case where the proof is wholly circumstantial. The instruction was taken from *Lee's, The Criminal Trial on the Virginias*, §440. Counsel contends that the instruction contained all the essential rules which the jury should have been informed of in determining a case where the evidence is wholly circumstantial. Further the rules have been settled both in Virginia and West Virginia and the principals have been followed in numerous cases in both jurisdictions. The Court granted Instruction N on circumstantial evidence, however, counsel contends that he was entitled to an Instruction in his own language and since Instruction I was more comprehensive, it should have been granted.

Instruction I-1 was offered as a substitute when Instruction I was refused. This instruction was taken from *Lee's*, Section 441 and citations noted therein.

26. *Did the Court err in granting Commonwealth's Instruction 5?*

This instruction inferred to the jury that the Commonwealth had established a *prima facie* case and that the defense was relying on alibi. The instruction ignored the defense theory that other unexplained footprints were found on the roof and that other persons may have been the guilty parties. Further, it directed the jury's attention to alibi defense evidence rather than a consideration of the whole evidence.

65* *27. *Was the evidence referring to "Kill" magazine prejudicial?*

The Commonwealth introduced evidence that the defendant had been editor of a magazine some 6 years previous to the crime in question which was called "Kill Magazine". Counsel objected to cross-examination and moved the Court to strike all reference to the testimony concerning the magazine on the grounds it was not relevant to any matter in issue, (T. p. 2483); that it was remote and the Commonwealth was trying to introduce character evidence when character was

not in issue (T. p. 2486). The Court overruled the motion to strike and exception was taken (T. p. 2486).

Counsel contends the evidence was prejudicial and inadmissible for the reasons stated and the Court erred in overruling the motion. Certainly the jury could have been prejudiced by the fact that the defendant had been editor of a magazine entitled "Kill Magazine".

66*

*VIII. CONCLUSION

Your petitioner, therefore prays that the Honorable Court grant the Defendant an appeal from the Judgment of the Circuit Court of Arlington County, to the end that the same may be reviewed that a Writ of Error be awarded, and the Court reverse and dismiss the prosecution or award a new trial.

Respectfully Submitted,

John Patler
by Thomas J. Harrigan, Counsel

CERTIFICATES AND STATEMENT

STATE OF VIRGINIA
County of Arlington,

I, Thomas J. Harrigan, an Attorney at Law, practicing in the Supreme Court of Appeals in the State of Virginia, do hereby certify that in my opinion the judgment complained of in the foregoing Petition is erroneous and should be reviewed by the Supreme Court of Appeals of the State of Virginia.

Thomas J. Harrigan

Thomas J. Harrigan, Attorney for Petitioner, states that John Patler is the sole Petitioner and Appellant seeking a Writ of Error, and that the Commonwealth of Virginia is the sole Appellee against whom a Writ of Error is sought; that he is Counsel for Petitioner and is at 2060 North 14th Street, Arlington, Virginia 22201.

Thomas J. Harrigan

This Petition will be presented to Howard G. Turner, Clerk, Supreme Court of Appeals, Richmond, Virginia. A copy of this Petition was delivered to William J. Hassan,

Commonwealth Attorney, Arlington, Virginia, on the 26th day of June, 1968.

Thomas J. Harrigan

Your Petitioner by Counsel requests that this Petition be adopted as and in lieu of his opening brief.

John Patler

by Thomas J. Harrigan, Counsel

Counsel for Petitioner desires to state orally to the Honorable Court his reason for granting this Petition.

Thomas J. Harrigan

This is to certify that a copy of this Petition with the Certificate and Statements appended has been delivered to William J. Hassan, Commonwealth Attorney, Courthouse, Arlington, Virginia 22201, on the 26th day of June, 1968.

Thomas J. Harrigan
Counsel for Appellant

Thomas J. Harrigan
2060 North 14th Street
Arlington, Virginia 22201
Counsel for Petitioner

Brief on Behalf of Defendant in Error
6/19/1970

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Richmond, Va.

IN THE
**Supreme Court of Appeals
of Virginia**

AT RICHMOND

RECORD No. 7103

JOHN PATLER,

Plaintiff in Error,

v.

COMMONWEALTH OF VIRGINIA,

Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR

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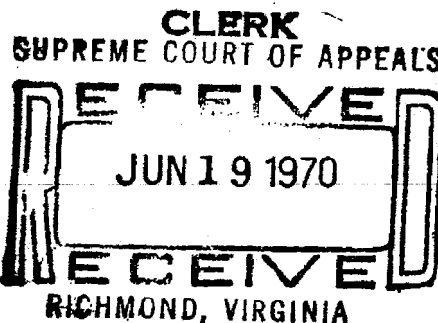


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IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND

RECORD No. 7103

JOHN PATLER,
Plaintiff in Error,
v.

COMMONWEALTH OF VIRGINIA,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR

The plaintiff in error, John Patler, will hereinafter be referred to as the defendant, the position which he held in the trial court. The defendant in error, the Commonwealth of Virginia, will hereinafter be referred to as the Commonwealth, where appropriate. The printed record will be referred to as "R."

PRELIMINARY STATEMENT

This case is before the Court on a writ of error awarded the defendant to a judgment of the Circuit Court of Arlington County on February 27, 1968, wherein the defendant was convicted of murder in the first degree and sentenced to twenty years in the penitentiary.

STATEMENT OF FACTS

On August 25, 1967, Matt Koehl and three other members of the American Nazi Party were preparing to leave the Party Headquarters in Arlington, Virginia, on Party business. (R., pp. 1097, 1099). At approximately 11:50 A.M., the leader of the Party, George Lincoln Rockwell, informed Koehl that he wished to use the only available automobile to take his laundry to a laundromat in a shopping center located in the 6000 block of Wilson Boulevard, a short distance from Party Headquarters. (R., pp. 1098, 1100). Normally Rockwell left it for others to do his laundry. (R., p. 1130).

Rockwell drove to the laundromat, parked his car perpendicularly in front of the building, entered, and placed his clothes in a machine. He then returned to the car, and as he was pulling away from the parking space, two shots were fired from the roof of the building. The bullets passed through the windshield and struck Rockwell in the chest. Rockwell left the automobile from the right side, pointed toward the roof of the building, then fell to the pavement and expired. (R., pp. 242, 245, 313).

A person living behind the shopping center heard a shot and then saw a man running across the building tops to a corner near the witness' yard where the man gained the ground and went over a brick wall into the parking lot of the shopping center. (R., pp. 327-8). Mrs. Alma Kilpatrick saw a man in a dark brown coat who "looked something like Mr. Patler looks like," run into the parking lot from the brick wall, then turn around and run back over the wall. (R., pp. 338-9).

A line of houses separates the shopping center from Ninth Street, which runs parallel to Wilson Boulevard.

A man in a black raincoat was seen to run diagonally across Ninth Street from the direction of the shopping center and turn north onto Liberty Street. The man was followed at a short interval by a barber from the shopping center. (R., pp. 404-6, 411).

Two barbers employed at the shopping center gave chase and one of them saw a man running at the corner of Ninth and Liberty Streets, behind the shopping center. The man was seen to run along Liberty Street, away from the shopping center, and disappear near Bon Air Park, located at the end of the street. (R., p. 330). One of the barbers obtained a description of the man from a bystander on Liberty Street and immediately called the police. The suspect was described as being "Spanish Puerto Rican," with dark hair, medium build, and wearing a trench coat or raincoat and yellow socks. (R., p. 334).

The police received notice of the shooting at about 12:02 P.M., (R., p. 455), and began searching for the suspect in the area adjacent to Bon Air Park opposite the point where the suspect disappeared. Inspector R. S. Cole responded to the search area at approximately 12:20 P.M. and thereafter saw a man with dark hair and trousers walking along Washington Boulevard wiping his face with a towel. (R., p. 436). Cole went past the suspect and turned his vehicle around to get another look. When Inspector Cole returned, the suspect was pacing back and forth at a bus stop at the intersection of Washington Boulevard and Inglewood Street. (R., pp. 461, 463). Inspector Cole approached to within fifteen to twenty-five feet and the suspect, then facing Cole, ran between two houses. (R., p. 463). Cole was in uniform

and wearing a police cap, (R., p. 472), and his unmarked cruiser had a visible red light in the grill. (R., p. 454). Cole went around the block without seeing the suspect, and was about to make a second circuit when he found the suspect in the custody of Detective Ernest R. Davis at a bus stop on Washington Boulevard, two blocks from the corner from which the defendant had run. (R., pp. 437-8, 465).

Detective Davis approached the suspect as he was about to board a bus and waved the bus away. (R., p. 1344). The suspect, later identified as John Patler, stated to Davis that he had no identification and would not give his name when requested to do so. (R., p. 525). Apprehended at about 12:30 P.M., (R., p. 469), the defendant was approximately one mile from the scene of the shooting. (R., pp. 470, 511, 1148). Patler was found to be dressed in a yellow shirt and dark gray pants, wet almost to the knees. (R., pp. 468, 521). His shoes and socks were soaked with water. (R., p. 597). A white towel was about his neck, and both the towel and the front and back of his shirt appeared to be wet from perspiration. (R., pp. 506, 521). The defendant was removed to the Arlington County Police Department and subsequently charged with the murder of Rockwell.

Near the corner of Ninth and Liberty Streets, Mrs. Nancy Thoburn saw a dark haired man wearing a neutral colored long coat of unknown type. The man wore a hat and dark gray pants. As the man ran by, Mrs. Thoburn was struck by the fact that the man's pants were wet halfway to his knees. (R., pp. 376, 398). After seeing the defendant at the police station on the afternoon of August 25, Mrs. Thoburn told police that there was

nothing in conflict between Patler's appearance and that of the man which she had seen earlier. (R., p. 399).

A positive identification of the defendant as the man seen running on Liberty Street was made by Glenn J. Hall, a resident of Liberty Street, after seeing Patler's photograph in a newspaper. Hall had previously told police that he did not believe that he could identify the man that he had seen running on Liberty Street. (R., p. 415).

A reversible raincoat, brown on one side and black on the other, and a cap were found on the afternoon of August 25th under a tree on a street near Bon Air Park and Liberty Street. (R., p. 479, 491). A pocket of the coat was later found to contain a panty hose with one leg removed and the other knotted. (R., p. 965). The coat was identified by a member of the American Nazi Party as being exactly like a coat which the defendant frequently wore, (R., p. 999), and by another member of the Party as a "raincoat that has been worn by Mr. Patler many times." (R., p. 1017).

On August 26, a 7.63 mm Mauser pistol was recovered by police from a creek bed in Bon Air Park. (R., pp. 777, 785). This weapon was identified by Robert A. Lloyd, III, a member of the Party, as having been acquired by him and subsequently loaned to the defendant, himself then a member of the Party, during 1964. Lloyd asked Patler to return the pistol in 1965, but was told by the defendant that the pistol had been stolen or mislaid. (R., pp. 989, 992-994). The Mauser pistol was established as the murder weapon by comparison of bullet fragments found in Rockwell's body and automobile, and two cartridge casings, one found on the roof of the laundromat and another under Rockwell's automobile,

with test firings made by an F.B.I. expert. The same pistol was found to have fired bullets recovered by police from a Highland County farm owned by the defendant's father-in-law, Sam Ervin. (R., pp. 288-91, 551, 691, 859-60, 865-66, 924-932, 940).

On August 24, 1967, 3.47 inches of rain fell in the area. (R., p. 1249). Water lay on the shopping center roof on August 25 to a depth of four to six inches in places. (R., pp. 636-37, 705). The defendant explained to the police that his clothes and shoes were wet from walking in grass and striking shrubbery with his hands. (R., pp. 773-74, 580-81).

Footprints found on the roof of the laundromat did not match the shoes worn by the defendant at the time of his arrest, (R., pp. 945-46); however, persons on legitimate business had been on the roof prior to the shooting. (R., p. 558). Tests conducted on the defendant's clothing for signs associated with firearms and paint specimens were negative. (R., pp. 933-34, 953). Soil samples taken from the route along which the suspect fled did not match soil deposits on the defendant's shoes. (R., p. 949). Tar found on the defendant's shoes was similar to tar found on the roof of the laundromat; however, neither sample contained impurities which could justify a finding that the samples came from the same source. (R., pp. 954-55).

The defendant became a member of the American Nazi Party in 1960. (R., p. 1367). Over the years, difficulties arose between Rockwell and the defendant, who was dismissed from the Party in March or April of 1967. (R., pp. 1056-57, 1076-78). The defendant left the Party in an atmosphere of ill will with Rockwell and Patler each charging the other with misfeasance and dishonorable

conduct. (R., pp. 1076-77, 1090-1093). A member of the Party testified that on three occasions commencing on June 8, 1967, the defendant spoke bitterly of his expulsion from the Party, shouting angrily that "Rockwell is an evil genius and he must be stopped," and, "We are going to stop him." (R., p. 1032).

The defendant and his family lived in Arlington with the defendant's father-in-law, Sam Ervin. The defendant testified that on the morning of August 25 he was occupied with errands and was driven to various business places by his wife, Alice, in Ervin's station wagon. The defendant produced receipts from various merchants to support himself, and his testimony was corroborated by Alice Patler. The defendant, his wife, and Sam Ervin testified that the defendant returned to the Ervin home shortly before noon and left the house in the heat of an argument, carrying a towel with which he had been wiping his hands. (R., pp. 1335-1342, 1322-1329, 1311-1315).

On rebuttal, an officer stated that during a search of the Ervin home, Sam Ervin told him that the defendant simply left the house at 11:10 A.M. (R., pp. 1465-66). The defendant stated that he walked rapidly from home to the place where he was apprehended and was attempting to return home by bus. He denied running from Officer Cole. (R., pp. 1342-1344).

The defendant admitted that friction existed between Rockwell and himself. (R., pp. 1348-1351). He denied borrowing the Mauser pistol from Lloyd, (R., p. 1361), and several of his witnesses testified that the pistol was in Lloyd's possession in the fall of 1965. (R., pp. 1203, 1258-59). The defense produced a black raincoat which

the defendant claimed was his. (R., p. 1358). The defendant stated that he had been in the shopping center the week before the shooting, and evidence was presented in rebuttal that he had been near the shopping center on August 23rd or 24th. (R., pp. 1438-39).

THE ISSUES

1. Was the evidence sufficient to support the verdict?
2. Did the trial court err in refusing to examine prospective jurors separately, in refusing to allow defense counsel to examine jurors concerning their opinion of the American Nazi Party, and in refusing to allow defense counsel to examine jurors concerning opinion as to guilt or innocence based on publicity of the case, the court having previously done so?
3. Did the trial court err in allowing the admission into evidence of certain bullet slugs and casings found at Sam Ervin's Highland County farm?
4. Did the trial court err in refusing to strike the testimony of Mrs. Alma Kilpatrick?
5. Did the trial court err by permitting Mrs. Nancy Thoburn to testify regarding her impression upon seeing the defendant at the police station, and in refusing to grant a mistrial?
6. Was the trial court correct in permitting the identification witnesses to testify without requiring the Commonwealth to disclose the nature of their testimony in advance?
7. Was the trial court correct in permitting the testimony of Glenn Hall?

8. Did the trial court err in allowing rebuttal evidence for the purpose of impeaching a defense witness, the rebuttal evidence having originated during a search of the defendant's residence?

9. Was the trial court's ruling that exculpatory evidence need not be produced prior to trial of no consequence in the absence of actual prejudice to the defendant?

10. Did the trial court err in allowing police recordings of telephone reports pertaining to the Rockwell shooting to be played to the jury?

11. Did the trial court err in admitting into evidence the raincoat and panty hose recovered along the route of the defendant's flight from the shopping center?

12. Did the trial court err in admitting Commonwealth's Exhibit 5-G in evidence?

13. Is there merit in the defendant's contention that the trial court erred in "refusing to grant a mistrial" on the basis of remarks made by the Commonwealth's Attorney at a bench conference?

14. Did the trial court err in conducting an examination of an eight year old witness before the jury to determine the witness' competency to testify?

15. Is there merit in the contention that Detective Faulkner deliberately attempted to prejudice the defendant?

16. Should this Court consider the defendant's assignments of error concerning the giving and refusal

of instructions in the absence of objections and exceptions thereto in the trial court?

17. Was the reference to "Kill" Magazine prejudicial?

ARGUMENT

I.

The Evidence Was Sufficient To Support The Verdict.

In *Boykins v. Commonwealth*, 210 Va. 309, 170 S.E. 2d 771 (1969), the Court stated that the Commonwealth has the burden of proving beyond a reasonable doubt that motive, time, place, means and conduct concur in pointing out the defendant as the guilty party. In the case at hand, the Commonwealth has carried its burden.

The shopping center where Rockwell was shot was several blocks from Party Headquarters, (R., p. 1131), and although Rockwell did not normally do his own laundry, it is not unreasonable to infer that he visited the shopping center for other purposes. (R., p. 1131). This was borne out by the operator of the laundromat, who saw Rockwell in the shopping center a number of times. Therefore, notwithstanding the fact that Rockwell announced his intention to go to the laundromat only a short time before he left Party Headquarters, it is not unreasonable to infer that a person who knew Rockwell might choose the shopping center to lie in wait for him even though he was uninformed of Rockwell's specific intention to go to the shopping center on August 25. As a former associate of Rockwell's, the defendant could be expected to know his habits, and the defendant certainly was familiar with the shopping center. (R., pp. 1364, 1366, 1437).

The murder weapon was positively identified by Lloyd as his weapon, which he lent to the defendant. When Lloyd sought the return of the weapon in 1965, he was told by the defendant that he no longer had it. The defendant claimed that he never received the gun from Lloyd. Thus, if the jury chose to reject the testimony of the defendant and that of his witnesses who claimed that they saw the pistol in Lloyd's possession in 1965, then the jury could infer that the defendant had the weapon at the time that Rockwell was shot.

Two circumstances directly link the defendant with the roof from which Rockwell was shot. First, the roof had a substantial amount of water standing on it and when apprehended, the defendant was found to be dressed in wet shoes and socks, and pants wet to the knees. Although the defendant offered an explanation of his condition, it must be remembered that the defendant was positively identified as the man seen fleeing along Liberty Street in the direction of Bon Air Park and the pants of this man were observed to be wet to the knees when he passed the corner of Ninth and Liberty Streets, behind the shopping center. Secondly, "rather substantive" deposits of tar were found on the bottom of the defendant's shoes, similar in composition to tar samples taken from the roof of the shopping center. (R., p. 953). An officer who was on the roof within a relatively short time after the shooting found that tar from the surface of the roof readily collected on his shoes. (R., pp. 692-94, 697). Thus, the jury could find that the defendant's clothes became wet, and his shoes collected tar as a result of having been on the roof of the shopping center.

It has been held that the flight of an accused after the commission of a crime is evidence tending to show guilt which may be considered by the jury and given such weight as they choose in connection with other evidence in the case. *Carson v. Commonwealth*, 188 Va. 398, 49 S.E. 2d 704 (1948); *Boykins v. Commonwealth*, *supra*. In *Anderson v. Commonwealth*, 100 Va. 860, 42 S.E. 865 (1902), cited in the *Carson* case, the Court stated at page 865 of its opinion that:

“The nearer . . . (the flight) to the commission of the crime committed, the more cogent would be the circumstance that the suspected person attempted to escape but it should be cautiously considered, because it may be attributable to a number of other reasons than consciousness of guilt.”

In the case at hand, the jury would be justified in placing great weight on the evidence of the defendant's actions subsequent to the shooting. The evidence is uncontradicted that after the shooting a man ran across the roof of the shopping center, gained the ground, then went behind the shopping center to run across Ninth Street and north on Liberty Street to disappear near Bon Air Park.

The testimony of Glenn F. Hall and the identification of the raincoat found near Bon Air Park justify a finding that the defendant was the man seen fleeing the shopping center. Furthermore, in the half hour, approximately, which elapsed between the shooting and the defendant's apprehension, the defendant had sufficient time to cover the distance from the shopping center to Washington Boulevard, approximately one mile. The defendant's

actions upon the approach of Inspector Cole strongly suggest that he was attempting to evade capture, and his appearance indicated recent physical exertion.

Since the defendant's description of his activities on the morning of August 25th did not include an admission that he was in the vicinity of the shopping center or Liberty Street, then the jury could find no reason to explain the defendant's flight other than his knowledge of guilt. The evidence of flight in this instance is especially damning because the jury could find that the man seen running at each point was the same person and thus the defendant is placed on the roof of the shopping center at the time that the shots were heard. (R. p. 327).

Finally, a motive for the killing of Rockwell by the defendant is established by evidence of the defendant's differences with Rockwell over the years, and his bitterness towards the man as a result of his expulsion from the Party.

When viewed as a whole, the evidence is consistent with guilt and excludes all reasonable conclusions inconsistent with guilt. Therefore, the jury's verdict should not be disturbed.

II.

The Trial Court Did Not Err In Refusing To Examine Prospective Jurors Separately, In Refusing To Allow Defense Counsel To Examine Jurors Concerning Their Opinion Of The American Nazi Party, And In Refusing To Allow Defense Counsel To Examine Jurors Concerning Opinion As To Guilt Or Innocence Based On Publicity Of The Case, The Court Having Previously Done So.

Both the Commonwealth and the defendant moved the trial court to examine each juror separately. The trial

judge refused to do so, stating that he did not wish to consume an undue amount of time of voir dire. The court felt that the panel could be examined together without prejudice to either party, whereas extended individual examination was more likely to produce error and prejudice. (R., p. 203). During the course of voir dire, the defense again moved the court to examine the panel separately. The court denied the motion, but stated that the motion would be reconsidered if the questioning of the panel demonstrated the need for such action. (R., p. 211).

The court undertook to question the panel first. The panel was directed to remain silent if the answer to any question was "no," and to raise their right hands for an affirmative response. (R., p. 204).

Among others, the court asked the following questions and received the responses indicated:

"Has any member of this panel expressed any opinion concerning the probability of the guilt or innocence of the accused in this case?

(No affirmative response noted).

"Has any member of this panel formed any opinion based upon newspaper or other publicity or any conversations you may have heard or any information or communications which have come to you in any way concerning the probability of the guilt or the innocence of the accused in this case?

(No affirmative response noted.)

"Has any member of this panel by reason of the political belief, social belief, religious belief or other beliefs or principles, any sensibility of any bias or

prejudice that would affect you in arriving at a fair and impartial verdict in this case based solely on the law and the evidence?

You are Mr. Wolfe?

Prospective Juror : That's right.

I want it to be known that I have had very strong feelings about the organization of which the defendant was a member, and I would want that to be known before I participated."

"The Court: Mr. Wolfe, what you have said is not quite an answer to my question, which is this:

Do any of the feelings that you have cause you to be biased or prejudiced so that in deciding the question of the guilt or innocence of the accused in this case you would be affected by those feelings and not objective, relying solely on the law and the evidence.

Prospective Juror : No, sir. As I understand your question and related to my views, the organization is not on trial here. It's the individual, and any of the evidence that would come before me would be treated on an objective basis as far as this case is concerned.

The Court: You would not have any prejudice against the accused or for him because of the feelings toward the organization of which he was allegedly a member?

Prospective Juror : No, sir. My viewpoint as far as he as an individual is concerned.

The Court: Do any other members of the panel have an affirmative answer to that question concerning bias or prejudice?

(No affirmative response noted.)" R. pp. 205-206).

Subsequent to the court's examination of the panel, the panel was examined by the Commonwealth's Attorney and then by defense counsel. The court steadfastly refused to allow defense counsel to question prospective jurors concerning their opinion of the American Nazi Party per se, holding that only prejudice directed toward the defendant because of his association with the Party would be relevant. (R., pp. 214-15, 222-23). Since the court had examined the panel concerning whether an opinion had been formed as to the guilt or innocence of the defendant, the defense was not allowed to again go into this matter. (R., pp. 219-221).

Whether or not each juror is examined separately, out of the presence of other jurors, should be at the sole discretion of the trial court. It is obvious from the court's rulings that the court felt that such a procedure should be used only if the answers of the jurors to the questions put to them convinced the court that the benefits of individual examination outweighed the danger of conveying information to the jurors which would preclude impartiality. Since the trial judge is in the best position to determine the exact manner in which voir dire is to be conducted, his decision should not be interfered with unless some injustice has been done.

The questions put to the jurors by the court concerning opinion as to guilt or innocence, quoted above, were adequate to determine whether the jury had formed such an opinion. One of the court's questions was directed to bias on the part of the jurors, because of their beliefs, which would affect their verdict. Mr. Wolfe expressed his strong feeling about the Party, but stated that this would not influence him in deciding the guilt or innocence

of the defendant. The trial judge correctly ruled that the jurors' opinion of the American Nazi Party was not relevant unless it created bias directed against the defendant. The court specifically ruled that the defense would be permitted to question the jurors concerning prejudice against the defendant based upon his public speeches and positions taken on behalf of the Party. (R., p. 214). As the court pointed out, an intelligent jury could not be had if jurors were dismissed simply because of their opinion of the Party. (R., pp. 214, 232).

As the defendant points out at page 29 of his brief, a juror stated that the Party was a "hate organization" when defense counsel asked the jurors if they were familiar with the political beliefs of the Party. The juror replied in the negative when asked whether the defendant's affiliation with the Party would influence him, (R., p. 221), but was later excused for a related reason. (R., pp. 224-225).

The gist of the defendant's contention that the court erred in ruling that the jurors' opinions of the Party were irrelevant, unless they were biased against the defendant thereby, is expressed at page 30 of the defendant's brief where it is said that "... if a juror had prejudicial feelings about an organization as notorious as the Nazi Party, it is inconceivable that the same juror would not have prejudicial feelings about a member therein." This amounts to no more than mere speculation. The defendant bears the burden of showing "identifiable prejudice" on the part of jurors and has failed to carry the burden. *Wansley v. Commonwealth*, 210 Va. 462, 171 S.E. 2d 678 (1970). Furthermore, leniency of punishment in itself rebuts any suggestion of prejudice on the part of

the jury. *Reil v. Commonwealth*, 210 Va. 369, 171 S.E. 2d 162 (1969). At the request of the defendant, the jury was not instructed on second degree murder. (R., p. 1482). Under the circumstances of this case, the punishment prescribed by the jury could hardly have been more lenient.

The defendant's contention that defense counsel should have been allowed to go into opinion formed from publicity surrounding the case is simply without merit. The court specifically inquired into this area as shown by that portion of the record quoted above, and the panel remained silent to indicate the negative in accordance with the court's instruction. The trial judge stated at length that he found the jury to be free from prejudice against the defendant. (R., p. 232). Therefore, in the absence of demonstrated injustice, the trial court's finding should not be disturbed. *Reil v. Commonwealth, supra. Temple v. Moses*, 175 Va. 320, 8 S.E. 2d 262 (1940).

III.

The Trial Court Did Not Err In Allowing The Admission Into Evidence Of Certain Bullet Slugs And Casings Found At Sam Ervin's Highland County Farm.

The evidence in question (three empty cartridges and three spent slugs, R., p. 125) was found on a farm owned by Sam Ervin in Highland County. The articles were in a pasture area at least fifty yards from the dwelling, according to Ervin (R., p. 190) and Alice Patler (R., pp. 186-7). State Police Investigator C. L. Bradley estimated the distance from the house at two hundred to two hundred fifty feet (R., p. 168). Although the officers had a search warrant in their possession when

they entered upon the Ervin property, the search warrant was later determined to be invalid because of an insufficient affidavit.¹

Bradley and Trooper Kelly posted the search warrant and talked to Lester James Miller, an employee of Ervin (R., p. 175). Miller advised that while painting a fence on the Ervin farm in July, 1967, he had seen Patler target shooting. (R., pp. 615-617). Miller pointed out the general area where the defendant had been shooting. (R., p. 177). The officers proceeded to the area to which Miller had directed them, and an inspection of the area revealed the shell casings which were introduced into evidence. The location of the casings, along with an inspection of a tree, indicated that someone had been target shooting. With the aid of an ax, the officers were able to extract several slugs from the tree. (R., pp. 844-5).

To support his argument that the area wherein the bullet casings and slugs were found was within the curtilage, the defense offered evidence to show that the Ervin and Patler families used the area for family outings and as a play area for children. The trial court noted, however, that the curtilage did not extend beyond the fence which surrounded the home (described by Ervin, R., p. 190) and "(t)he family did not during the daily use have to go outside (the) area, where the casings and slugs were found." (R., pp. 197, 198, also see *McClannan v. Chaplain*, 136 Va. 1, 116 S.E. 495 (1923)).

¹ The officers present at the Ervin farm were State Police Investigator Bradley, State Trooper Kelly, and Detectives Crickenburger and Eagle. The search warrant referred to "empty cartridge cases and slugs, all of said evidence bein (sic) on the curtilege (sic) of the said dwelling and not within the said dwelling." (R. p. 4).

The Fourth Amendment protection afforded to houses extends to the curtilage, but “whether the place searched is within the curtilage is to be determined from the facts, including its proximity or annexation to the dwelling, its inclusion within the general enclosures surrounding the dwelling, and its use and enjoyment as an adjunct to the domestic economy of the family.” *Care v. U.S.*, 231 F. 2d 22, 25 (10th Cir. 1956) as quoted in *Wattenburg v. U.S.*, 388 F. 2d 853 (9th Cir. 1968). Open fields are not protected by the Fourth Amendment. *Hester v. United States*, 265 U.S. 57 (1924).

In *Wattenburg v. U.S.*, *supra*, the Federal Appeals Court held that a stockpile of Christmas trees located some 35 feet from a motel (the defendant’s residence and place of business) and approximately 5 feet from a parking lot used by the defendant’s employees and general public was within the curtilage and protected by the Fourth Amendment. The Court pointed out, however, that law enforcement officials conducted an extensive examination of the trees at night in the defendant’s “back yard” and stated “(t)here can be no doubt that Wattenburg, in placing the stockpile this close to his place of residence, sought to protect it from this kind of governmental intrusion.” (388 F. 2d at 858).

In *Katz v. U.S.*, 389 U.S. 347 (1967), the Supreme Court said:

“What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” (389 U.S. at 351).

Applying the teachings of *Katz*, *supra*, it is clear that the defendant knowingly exposed the bullet casings and

slugs to public view, there being no effort to remove the articles to an area of privacy. Additionally, the evidence here does not consist of bulky articles, such as the Christmas trees in *Wattenburg, supra*, which could not be kept in a dwelling, business office, briefcase, or similar place.

Because of the ruling that the articles seized were not within the curtilage as set forth in the search warrant, there was no need to consider the "fruit of the poisonous tree doctrine," advanced on appeal. Assuming arguendo, that the area inspected by the officers was one in which "there was a reasonable expectation of freedom from governmental intrusion" (*Mancusi v. DeForte*, 392 U.S. 364, 368 (1968)), the invalid search warrant is "sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. U.S.*, 371 U.S. 471, 488 (1963). In the instant case, the officers went to the Ervin property, whereupon Lester James Miller, a hired hand, advised that he had seen the defendant target shooting in a pasture. The officers then proceeded to the pasture where the casings were discovered, and subsequently slugs were extracted from a tree.

If we assume that the officers would not have entered upon the Ervin property without a search warrant,² the actual issuance of the warrant and the subsequent in-

² The defendant contends that the search would not have been conducted if the search warrant had not been secured. It is significant to note, however, that Investigator Bradley simply testified that he would not have entered upon the premises if he had been told by Judge Beverage not to enter upon the Ervin property. (R. p. 176). Additionally, the validity of a search warrant has been held to be of no significance when entry upon premises was made pursuant to a proper arrest warrant with no elements of trespass or fraud. (*Townsend v. United States*, 271 F2d 445 (4th Cir. 1959)), certiorari denied, 362 U.S. 921.

spection of the pasture area had “become so attenuated as to dissipate the taint.” (*Nardone v. United States*, 308 U.S. 338, 341 (1939)). Additionally, the reasonableness of the search should not be confused with the reasonableness (or unreasonableness) of the search warrant. *Cooper v. California*, 386 US 58, 62 (1967); *Carter v. Commonwealth*, 209 Va. 317, 320, 163 SE 2d 589 (1968); *One Chevrolet Pickup Truck v. Commonwealth*, 208 Va. 506, 508, 158 S.E. 2d 755, 757 (1968).

The trial court could have reasonably concluded that the defendant had abandoned the empty shell casings and the spent slugs. There was no evidence to show that the defendant had made any effort to remove the slugs from the tree, and the existence of shell casings in an open area can imply only abandonment. Accordingly, abandoned articles are not protected by the Fourth Amendment. *Hawley v. Commonwealth*, 206 Va. 479, 144 SE 2d 314 (1965), certiorari denied, 383 US 910; *Abel v. United States*, 362 US 217 (1960).

It is submitted that the defendant is also faced with the question of standing to object to the search. The record indicates that the Ervin home was visited by the defendant and his family with no particular invitation being necessary, but it is also clear that the defendant had no possessory right to the Ervin property, and the defendant testified that his residence was at 2522 Lee Highway, Arlington, Virginia. (R., p. 1335). The defendant offered no evidence to show ownership or the right to possession of the seized property, and the defendant was not present when the property was seized. Accordingly, it is submitted that the defendant lacks standing to object. *Sullivan v. Commonwealth*, 210 Va.

205, 169 SE 2d 580 (1969); *Alderman v. United States*, 394 US 165 (1969).

In summary, the Commonwealth contends that there can be no Fourth Amendment violation as a result of the officers' entrance upon unposted land (R., pp. 1316, 1317), (neither owned nor subject to any possessory rights of the defendant), and the subsequent inspection of an open area outside of the Ervin property curtilage, resulting in the seizure of certain abandoned bullet casings and spent slugs which were in plain and open view. *Ker v. California*, 374 US 23 (1963); *Hester v. U.S.*, *supra*.

IV.

The Trial Court Did Not Err In Refusing To Strike The Testimony Of Mrs. Alma Kilpatrick.

Mrs. Alma Kilpatrick was backing her car out of the shopping center parking lot at the west end of the building when she saw a man jump over the wall at the rear of the building and run past the back end of her car, peer up Wilson Boulevard toward where Rockwell lay, and then run back to the wall and disappear over it in the direction from which he had come. The following day Mrs. Kilpatrick called the police to report what she had seen, and she was accordingly shown some pictures by the police. Mrs. Kilpatrick selected pictures of men other than the defendant. Subsequently, she came to view the defendant at the request of police on two different occasions at various court proceedings. At that time she told police she was undecided whether Patler was the man she had seen. Shortly before the trial Mrs. Kilpatrick decided that Patler was the man, but at the time of trial

she was again unsure. Her only testimony before the jury which made any reference to the defendant as the man she had seen was at page 339 of the record:

“I believe that he was dark haired and he had either a brownish or a dark brown coat on, and he looked something like what Mr. Patler looks like.”

The defendant urges that this testimony should have been held inadmissible because of Mrs. Kilpatrick's participation in courtroom showups, based on the decision in *U.S. v. Wade*, 388 U.S. 218 (1967). It should be noted that the *Wade* doctrine has recently been held by this court to be inapplicable to pre-indictment confrontations. *Buchanan v. Commonwealth*, 210 Va., SE 2d (1970). Furthermore, on these facts it cannot be said that the identification made by Mrs. Kilpatrick, if it can be called an identification was based on her views of Patler at the courtroom showups. She did not positively identify Patler as the man in spite of any suggestion which the showups might have implied. The defense was permitted extensive examination of the witness outside of the jury's hearing during which Mrs. Kilpatrick disclosed her vacillation, and was free to use the information gained in this somewhat extraordinary procedure to impeach her credibility. It should be clear that Mrs. Kilpatrick's testimony was based upon her original sight of the running man, and was the same as it would have been had she not seen Patler again until the day of trial, as the court below found. (R., pp. 358-59).

V.

The Trial Court Did Not Err By Permitting Mrs. Nancy Thoburn To Testify Regarding Her Impression Upon Seeing The Defendant At The Police Station, And In Refusing To Grant A Mistrial.

Mrs. Thoburn was walking north on Liberty Street toward Wilson Boulevard with her children when she saw a man running north on Liberty Street from its intersection with Ninth Street. This man was described to police as being of medium build with dark hair and complexion, wearing a dark coat and hat, and having wet trouser legs to a point halfway up the shin. On the afternoon of the same day, Mrs. Thoburn was asked by police to come to the station where Patler was being held to see if she could identify him. She sat in the hallway while Patler briefly walked by, handcuffed and escorted by police. At this time she told police that his appearance was not conflicting with the appearance of the running man on Liberty Street. (R., pp. 383-386). At trial, however, she would have said that Patler was in fact the man on Liberty Street, but the trial court ruled that her testimony could be no more than her first response to police at the showup.

The defendant urges that Mrs. Thoburn should not have been permitted to testify because her identification was tainted by the suggestive showup in violation of the *Wade* rule. Once again, as with Mrs. Kilpatrick, it is clear that the witness was not permitted to testify to anything other than her first impression on seeing Patler again, and did not make a positive identification to the jury. The trial court, as with Mrs. Kilpatrick, took great

pains to insure that the defendant was not prejudiced by an identification based on improper suggestion. (R., pp. 386, 392, 394-5). This was the purpose of the *Wade* rule, to insure that the seed planted by suggestion did not grow from indecision to conclusiveness with the passage of time from showup to trial.

Finally, the defendant urges that a mistrial should have been granted because Mrs. Thoburn told the jury that she had seen Patler at the police station in violation of the court's directions. (R., pp. 396, 399). No reasons are assigned by the defendant in his brief to support this conclusion, and no prejudice to the defendant is apparent. It is difficult to see why the brief inadvertence by Mrs. Thoburn should form the basis for a mistrial.

VI.

The Trial Court Was Correct In Permitting The Identification Witnesses To Testify Without Requiring The Commonwealth To Disclose The Nature Of Their Testimony In Advance.

The defendant argues that he should have been advised by the Commonwealth whether identification witnesses had attended lineups or showups conducted without notice to the defendant or his counsel. This argument, if sustained, would require what would amount to a discovery procedure in criminal cases, for which there is no present provision in Virginia law. It must be realized that the prosecutor who tries any criminal case calls his witnesses with the knowledge of what they will say and on what they will base their testimony, and he calls these witnesses with the further knowledge that he risks a mis-

trial or a reversal if the witness is shown to have been prejudiced in his testimony by illegal police procedures. If the prosecutor chooses to take these risks, the defense is free to determine by way of cross-examination what the basis of the testimony is and to urge it as error if it turns out to be such. If the testimony as allowed by the trial court does not prove to have any taint, the defendant has certainly not been prejudiced, and he should have no complaint. He has not, after all, been required to disclose his defense to the Commonwealth. While such discovery on a reciprocal basis may become a part of Virginia law in the future, there now exists no such requirement, nor does the *Wade* rule require any such procedure. Furthermore, in support of his claim that he was prejudiced, the defendant states only that his counsel was forced to object during the course of testimony. However, the act of objecting precipitates the procedure by which the trial court determines the admissibility of questioned evidence and this procedure was approved in *Stanley v. Commonwealth*, 210 Va. 490, 171 S.E.2d 846 (1970).

VII.

The Trial Court Was Correct In Permitting The Testimony Of Glen Hall.

Mr. Hall, who lived at 934 North Liberty Street, came home for lunch shortly after noon and on alighting from his car saw a man running south on Liberty Street, past his house, toward Bon Air Park. The man stopped twice and looked back in the direction he had come, and then ran off. Hall described him as being approximately

five feet eight inches in height, with a dark complexion and wearing a dark coat and hat. Although Hall told several persons shortly thereafter that he did not believe he could identify the running man, he realized two days later on seeing Patler's picture in the newspaper that he could indeed recognize Patler as the man. (R., pp. 414-16). At trial, on extensive cross-examination, Hall admitted that he had been unsure that he would be able to identify the man, but also testified in detail as to his opportunity to see the man's face and his reasons for giving him careful scrutiny. (R., pp. 417-26). The defendant insists that Hall's identification should be stricken because it was based on the improper suggestion of the newspaper photograph, not on any improper action by the police. However, no objection whatsoever was made to Hall's testimony at the time he gave it.

It is significant that Hall's immediate reaction to the newspaper photograph was "this is the man, all right." (R., p. 415). This reaction was related to the jury just as it occurred and there was no appearance of any time difference between Hall's sight of the newspaper and his exclamation of recognition. Thus it cannot be said that Hall's courtroom identification was the result of improper suggestion coupled with a mental "germination period." As before, the defense was free to attempt to weaken Hall's testimony by showing his original doubts, and did so. In the absence of objection to this testimony, and under the circumstances surrounding this identification, it is patent that no error was committed and this assignment of error is without merit.

VIII.

The Trial Court Did Not Err In Allowing Rebuttal Evidence For The Purpose Of Impeaching A Defense Witness, The Rebuttal Evidence Having Originated During A Search Of The Defendant's Residence.

The defendant's residence in Arlington was searched, but the items seized were of no particular relevance to the criminal proceedings, and the Commonwealth, without conceding the insufficiency of the search warrant affidavit, agreed not to contest the defendant's motion to suppress the evidence and to return the items seized to the defendant. (R., pp. 135, 136). During the course of the trial, the defendant offered a shell casing which was an article seized during the Arlington search, and it was stipulated, by counsel, that the shell casing was found at the defendant's residence. (R., pp. 936-37). In what was apparently a moment of frustration, the Commonwealth's Attorney remarked:

"We stipulated it was an illegal search and it (the evidence) was suppressed and there was no fight over it." (R. p. 936).

There is no indication in the record that the Commonwealth's Attorney had actually stipulated the illegality of the search, but for purposes of this argument, the search will be considered illegal. In effect, the defendant was successful in having evidence taken during the search suppressed, but the defendant was likewise successful in having some of the suppressed evidence introduced.

Sam Ervin, a defense witness, testified that he had last seen the defendant on the day of the crime at approxi-

mately 11:45 A.M., (R., pp. 1314-15). On cross examination, Ervin denied telling Sgt. Kadel, an Arlington policeman, that the defendant left the Arlington address at approximately 11:10 A.M. (R., p. 1321). Sgt. Kadel was called as a rebuttal witness and testified that Ervin "... told me that John (Patler) left his house at ten minutes after eleven." (R., p. 1466).

Although the defendant objected to Kadel's testimony concerning any statements made by Ervin at the time of the allegedly illegal search, the record shows no objection to the trial court's oral instruction that Kadel's testimony was received for the sole purpose of impeachment. (R., pp. 1481, 1482).

It is clear that the Commonwealth's Attorney was within the proper bounds of cross-examination when Ervin was asked if he had made a prior inconsistent statement. When this was denied, the introduction of rebuttal evidence for impeachment purposes surely bears no connection whatsoever to "tainted" evidence. In *Walder v. United States*, 347 U.S. 62, 65, (1954), the Supreme Court said:

"It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths. Such an extension of the Weeks doctrine [*Weeks v. United States*, 232 U.S. 383 (1914)] would be a perversion of the Fourth Amendment."

The defendant's reliance on *Inge v. United States*, 356 F.2d 345 (D.C. Cir. 1966) is misplaced. In *Inge*, the Government Attorney used a written statement which otherwise might have been inadmissible for the sole purpose of impeaching the defendant's testimony that he did not remember "cutting the deceased." The court noted that the truth of the impeaching statement tended to establish guilt and the use of the statement "was as damaging as if the statement had been admitted in evidence." (356 F.2d at 350). In the instant case, there is nothing in Ervin's statement which would establish guilt, but even if there were, no constitutional violations with reference to the defendant have been shown, and as pointed out, the jury was instructed regarding the purpose for which this testimony was received.

IX.

The Trial Court's Ruling That Exculpatory Evidence Need Not Be Produced Prior To Trial Is Of No Consequence In The Absence Of Actual Prejudice To The Defendant.

Relying on *Brady v. Maryland*, 373 U.S. 83 (1963), the defendant claims that the lower court erred in its pre-trial ruling that the prosecution must produce exculpatory evidence in its possession at trial, rather than upon the request of the defendant. The defendant does not claim that exculpatory evidence was suppressed, but says that he was not furnished the names of witnesses who attended lineups that he was precluded from preparing his case, that exculpatory evidence was presented in the least effective method, and that he was left at the mercy of the prosecuting attorney to determine whether all exculpatory evidence had been produced.

Brady v. Maryland, *supra*, does not require an *in camera* search of the prosecutor's files for evidence favorable to an accused, nor does it require pre-trial discovery. *U.S. v. Harris*, 409 F.2d 77 (4th Cir. 1969). Therefore, defense counsel must rely on the prosecution to produce all material exculpatory evidence, whether or not specifically requested to do so. Even if it is assumed that defense counsel was entitled to the names of identification witnesses, the Commonwealth's attorney pointed out at a pre-trial hearing that defense counsel had the names of all such witnesses, and that there was no lineup. (R., pp. 51, 53-54).

The evidence to which the defendant points as being exculpatory in nature was the testimony of the various F.B.I. experts who examined the murder weapon for fingerprints and the defendant's clothing for clues which would link him to the shooting. (R., pp. 919-55, 961-67). The defendant offers nothing in support of his contention that this evidence was "put on in the least effective method" other than his claim that his counsel was forced to object to the chain of custody of items examined by the F.B.I. experts:

The defendant's claim that he was precluded from preparing his case is equally without merit. The record bears witness to the fact that the defendant's theory of the case was fully presented, and that the testimony of the F.B.I. experts merely tended to corroborate the defendant.

In *U.S. v. Jordan*, 399 F.2d 610 (2nd Cir. 1968), the appellant complained that material in the possession of the government was not disclosed to the defendant until

trial. The court merely stated that in the absence of any showing of prejudice, they did not consider the complaint substantial. Such a finding is justified in the case at hand.

X.

The Trial Court Did Not Err In Allowing Police Recordings Of Telephone Reports Pertaining To The Rockwell Shooting To Be Played To The Jury.

During the course of the trial, the prosecution sought to introduce tape recordings of telephone reports pertaining to the Rockwell shooting. The calls were automatically recorded in the police dispatcher's office on August 25, 1967, between 12:02 and 12:04 P.M. (R., pp. 827-29, 831). The court allowed the recorded telephone reports of Thomas E. Blakeney and John Hancock to be played to the jury over the hearsay objection of the defendant on the ground that these reports were part of the *res gestae*. John Hancock had previously testified that he called the police after the shooting, and described the content of his report. (R., p. 313). Thomas E. Blakeney, one of two barbers who gave chase after the shooting, had previously testified that he called the police and relayed a description of the fleeing suspect from Cummings, the other barber, and Goodlett, a bystander. (R., p. 334). Both Cummings and Goodlett testified prior to the playing of the tape. (R., pp. 330-31, 476).

The Commonwealth does not rely on the lower court's ruling that the reports were part of the *res gestae*. See *Chappell v. White*, 182 Va. 625, 29 S.E.2d 858 (1944). It is apparent, however, that the trial court did not err in allowing the jury to hear the portion of the tape to which

the defendant objects. First, the prosecution apparently did not offer the tapes as proof of the truth of the content of the reports contained thereon. (R., p. 830). Secondly, while the content of the tapes does not appear in the printed record, the trial court stated, in response to a motion for mistrial, that nothing was introduced by the tapes that was not already in evidence by the direct testimony of the persons who made the calls. (R., p. 833). Although numerous reasons have been advanced by the authorities in support of the hearsay rule, the primary rationale is the hearsay evidence has not in some way been subjected to the test of cross-examination. 5 Wigmore, *Treatise on the Anglo-American System of Evidence in Trials at Common Law* 1362-3 (3rd Ed. 1940); M. Marshall & J. Fitzhugh, Jr., *The Law of Evidence in Virginia and West Virginia* 134 (1954). Thus, under the circumstances of this case, where every person who was involved testified, and no new material was subsequently introduced by the tape, there is no reason nor need to apply the hearsay rule. Furthermore, as the lower court pointed out, the playing of the tape was harmless to the defendant under these circumstances. (R., p. 833).

XI.

The Trial Court Did Not Err In Admitting Into Evidence The Raincoat And Panty Hose Recovered Along The Route Of The Defendant's Flight From The Shopping Center.

Seven witnesses gave descriptions of the clothing worn by the man seen fleeing after the shooting. One saw a

"brownish or dark brown coat" (R., p. 339), while another stated that the man appeared to be wearing a blue serge suit (R., p. 957), and a third person saw a dark coat. (R., p. 406). Others described the man as wearing a black raincoat, (R. p., 411), a "loose fitting coat," "a longer type coat" (R., p. 398), a dark trench coat, (R., p. 476). The black and brown reversible raincoat found in a yard on North Larrimore Street near its intersection with Liberty Street in the vicinity of Bon Air Park, (R., p. 428, 427, 479-480), was not shown to these witnesses for identification. Therefore, the court cautioned the jury that the coat was received in evidence conditioned upon the subsequent production of evidence to connect the coat with the defendant. The coat was subsequently linked to the defendant by the testimony of Robert A. Lloyd, III, who testified that the defendant had a coat exactly like the exhibit, (R., p. 999), and that of Robert Lee Pace, who stated that the exhibit was "a raincoat that has been worn by Mr. Patler many times." (R., p. 1017). An F.B.I. expert examined the coat for evidence of ownership, and in going through its pockets, found a pair of panty hose with one leg and a portion of the back missing and the remaining leg knotted in several places. (R., pp. 962, 965). The officer who originally received the coat was recalled and testified that he had not found the panty hose when he examined the coat, but that he had searched only two of the coat's four pockets. (R., pp. 984-85).

The defendant argues that the "admission of the coat allowed the jury to speculate as to its evidentiary value." However, the court cautioned the jury that the coat was

received only conditionally, and the subsequent testimony of Lloyd and Pace, when considered with the testimony of the seven eyewitnesses, furnished adequate relevancy for the coat to go to the jury. The panty hose may well have been intended for use as a mask. Be that as it may, the panty hose was linked to the coat, and went to the jury for whatever probative value it may have had. In the absence of a showing of prejudice, the defendant should not be heard to complain that this item "failed to support an inference of guilt."

XII.

The Trial Court Did Not Err In Admitting The Commonwealth's Exhibit 5-G In Evidence.

Commonwealth's Exhibit 5-G, (printed in appendix), is a copy of a letter found on Rockwell's person at the time of autopsy. (R., p. 318). The typed letter bears the salutation "Dear Commander," and is signed "J. Pater." Rockwell was referred to as "Commander" by his associates, (R., pp. 1046, 1352), and the signature was found to be the writing of the defendant. (R., pp. 670-73). The original of the letter could not be found despite diligent search. (R., pp. 1051-52). Although the letter is undated, it bears reference to a debate which occurred in July 1965. (R., p. 1031). The defendant admitted writing the letter in the early part of 1966. (R., pp. 1390-91).

Prior to receiving the letter in evidence, the trial judge observed that the letter is "... most conciliatory ... a rather friendly letter." (R., p. 326). In admitting the letter, the court relied on *O'Boyle v. Commonwealth*, 100 Va. 785, 40 S.E. 121 (1901), and instructed the jury

at the time of admission that the letter was admitted for the sole purpose of showing the relationship between Rockwell and the defendant, and in considering the weight to be assigned the letter for this purpose, the jury should take into account the contents and tone of the letter, and the length of time between the writing of the letter and Rockwell's death. (R., pp. 1054-55).

Although the letter is conciliatory in nature, it should be remembered that the letter was in the possession of the prosecutor, who sought to establish ill-will between the defendant and Rockwell as a motive for the killing. As the defendant has stressed, it was incumbent upon the prosecutor to produce evidence favorable to the defendant. However, the defendant says that the exhibit has no probative value and raises the objection on appeal that the defendant was prejudiced by this exhibit because it indicated "that Patler was fooling around with another woman." First, the question of probative value is settled by the *O'Boyle* case, which fully supports the court's action. Secondly, if the defendant objects to certain matters contained in the exhibit, he should have objected in the trial court and requested the court to block the language out. This he failed to do. (R., pp. 324-25).

XIII.

There Is No Merit In The Defendant's Contention That The Trial Court Erred In "Refusing To Grant A Mistrial" On The Basis Of Remarks Made By The Commonwealth's Attorney At A Bench Conference.

As the defendant points out, the following exchange took place between counsel at the bench:

"Mr. Hassan: This is fantastic. This gets to be ridiculous, these bench conferences.

Mr. Harrigan: I object to these comments.

Mr. Hassan: You object to everything and I couldn't care less.

The Court: All right, gentlemen.

Mr. Morris: We request that the jury be sent out and finish this matter once and for all.

Mr. Hassan: Do you want to take me out someplace? Fine.

Mr. Harrigan: I move for a mistrial because the remarks are uncalled for and prejudicial.

The Court: I don't believe the jury can hear us.

Mr. Harrigan: They're laughing. I want the record to show that the jury thinks there's something very funny going on.

The Court: Let the jury retire.

Mr. Harrigan, your objection I take it does not go to this picture but goes to the testimony of this witness?" (R. p.482).

The motion for mistrial referred to by the defendant in his brief is quoted above. The record is devoid of a ruling on this motion by the court and exception by defense counsel.

The court subsequently admonished counsel to refrain from angry exchanges at bench conferences, and repeated his belief that the prosecutor's remarks could not be heard by the jury. (R., pp. 484-85). Defense counsel thereafter requested the court to instruct the jury to disregard re-

marks of counsel, (R., p. 485), and the court so cautioned the jury. (R., p. 486).

In the absence of a ruling on the defendant's motion for mistrial and exception thereto, and in view of the court's instruction to the jury at defense counsel's request, the defendant should not be heard now to complain of the prosecutor's remarks.

XIV.

The Trial Court Did Not Err In Conducting An Examination Of An Eight Year Old Witness Before The Jury To Determine The Witness' Competency To Testify.

Defense counsel objected to eight year old Christine Freeman being called as a witness. The child was examined before the jury to determine her competency, and the court found that she should not be permitted to testify. (R., pp. 498-501). Therefore, the defendant's contention is of no moment. However, the defendant speculates that he was prejudiced simply because he was "forced" to object to the competency of the witness and to conducting an examination in the presence of the jury.

This Court ruled in *Carpenter v. Commonwealth*, 186 Va. 851, 44 S.E. 2d 419 (1947), that the question of the competency of an infant witness is waived unless the defendant asks for a preliminary examination or makes timely objection to the testimony of the infant. In the case at hand, the witnesses were sworn as a group prior to the empaneling of the jury, and no request for a preliminary examination was made, (R., p. 199); therefore, objection was essential. If the defendant was not satisfied with the manner in which the court dealt with his objection to the witness' competency and did not wish to

be heard before the jury, then his remedy was to ask to see the court in chambers and there voice objection to the court's procedure. This the defendant failed to do.

XV.

There Is No Merit In The Allegation That Detective Faulkner Deliberately Attempted To Prejudice The Defendant.

Detective Faulkner, present at the time of the defendant's arrest, was asked why he placed handcuffs on the defendant. The witness stated that he did so because the defendant was similar to the described subject of the search, and the court refused to strike the question and answer. (R., p. 505).

The question and answer merely belabor what should have been obvious, and the answer itself was simply a recital of the detective's reason for his action. However, the defendant claims that this answer, when read with the detective's answer to another question concerning the defendant's appearance at the time of his arrest, (R., p. 506), establishes an "obvious, deliberate use of prejudicial and inadmissible testimony." This allegation was not made in the trial court, and a reading of the whole testimony of Detective Faulkner shows it to be of no merit. (R., pp. 503-13).

XVI.

This Court Should Not Consider The Defendant's Assignments Of Error Concerning The Giving And Refusal Of Instructions In The Absence Of Objections And Exceptions Thereto In The Trial Court.

The defendant assigns error to the giving of Commonwealth's Instruction 5, and the refusing of the de-

fendant's Instructions W, T, P, J, H, F, E, C and I-1; however, both the printed record and the original trial transcript are devoid of objections and exceptions to the giving and refusal of instructions, and contain only a recital by the court of the instructions which the court gave and refused. (R., p. 1481). Therefore, the merits of the above said instructions should not be reached.

XVII.

The Reference To "Kill" Magazine Was Not Prejudicial.

The defendant was cross-examined regarding his activities in 1961 after he left the American Nazi Party for a time. The defendant was asked the name of a publication associated with a group to which the defendant belonged during this period, and the defendant replied, "Kill Magazine." No objection was made to the question, or thereafter, until the prosecution attempted to introduce a copy of the magazine in evidence. (R., pp. 1367-68). The court refused to admit the magazine in evidence, but would not strike the prior reference to it from the record because the contents of the magazine were not disclosed to the jury and no prejudicial use of the magazine had been made at that point. (R., p. 1370). Under these circumstances, the bare recital of the name of the magazine should not be held to be prejudicial.

CONCLUSION

For the foregoing reasons, the judgment of the lower court should not be disturbed. Despite the sensational nature of the Rockwell shooting, the defendant received

fair trial and the lightest possible punishment on a verdict of guilty.

Respectfully submitted,

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Richmond, Virginia 23219

CERTIFICATE

I hereby certify that three copies of this Brief on Behalf of the Defendant in Error were mailed to Thomas J. Harrigan, Esquire, The Dixie Building, 2060 North 14th Street, Arlington, Virginia, Counsel for the Defendant in Error, this 19th day of June, 1970.

C. TABOR CRONK

APPENDIX

CONFIDENTIAL

Dear Commander:

We all gathered around and listened to your debate with Stokely Carmichel (sic). It was terrific. You handled yourself beautifully. I would like to borrow one or two tapes per week from you and hold some educational-type sessions down here. It would be one of the best ways to educate and train our people for debate.

I feel much better after talking to you. I want so badly to get back into the spirit of things and push for you all the way. I don't think there are two other people on earth who think and feel the same as we do. Whenever I become discouraged or disillusioned, I feel empty inside. You are a very important part of my life. I need you as much as you need me. Without you there is no future.

Please be sure to return this letter with all the other vile letters I wrote to you. I feel very ashamed and uncomfortable with those letters in existence. It would prove very embarrassing in the future if they are not destroyed. There is no doubt that some of Hitler's closest men got angry at him and said or wrote things about which they were later on ashamed of. So please return them, including this letter.

As for that other incident you mentioned . . . it always takes "two to tango". I don't know what the other party said to you, but I don't "grab" anybody unless they are looking to get "grabbed". No woman has a hold on me. If Alice wants to make it with you, I wouldn't object. That is the truth. I would only get angry if it was forced on her against her will. Just the other nite (and this is

App. 2

strictly confidential) Mrs. A, was "grabbing" ME in my room. I began to reciprocate, but cut it off. And sometime I'll tell you about that little scene.

Ever since Erika, I have learned my lesson. Alice is an exceptional girl. She worships you. I am working (part-time) only to do what is honorable. I've got to start doing things right again. I am sick and tired of sneaking, hypocrisy, etc. I want to face myself and get on the right track. But I will never, never let a woman control me. I've learned my lesson.

Also, I have been doing a tremendous amount of reading. And I do not need to cram down all the garbage being fed to kids today. I have debated on personal scale with liberals, very educated ones, in fact, and have held my own. What I am doing is studying college text books to see what the kids are learning so that I can be on the ball when dealing with them. And, there are ways in which you can squeeze out of tight spots with quick and evasive talk. Diversionary type talk. Please don't hold lack of education against me. Sure I'm unpolished and not "educated". But what would you want: The present John Patler from the gutter with a heart on fire and a burning love for the working people and you and the cause; or, an "educated" snob full of false pride and conceit? I'm doing my best, getting better every day. I wish you could see me in action talking face to face with college people . . . any people. I do a damn good job on them, in spite of my lack of "book learning".

Sieg Heil!

/s/ J. Pater

Virginia Supreme Court Verdict,
Patler v. Commonwealth of Virginia Appeal
11/30/1970

Richmond**JOHN PATLER V. COMMONWEALTH OF VIRGINIA.**

November 30, 1970.

Record No. 7103.

Present, All the Justices.

- (1) Criminal Procedure—Evidence—"Open Field" Doctrine.
 - (2) Search and Seizure—Open Field—Definition.
 - (3) Criminal Procedure—Appeal—Presumption.
 - (4) Criminal Law—Circumstantial Evidence—Burden of Proof.
1. Warrant not required for search of "open field" and evidence discovered there is admissible in criminal trial.
 2. Curtilage of dwelling house is space necessary and convenient, habitually used for family purposes and, carrying on of domestic employment. When fence is erected it ordinarily defines the curtilage, and space beyond fence is "open field".
 3. When sufficiency of evidence is challenged after conviction, Appellate Court will view evidence in light most favorable to the Commonwealth. Judgment should be affirmed unless plainly wrong or without evidence to support it.
 4. Where proof relied upon by Commonwealth is largely circumstantial, to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence. Inferences to be drawn within province of jury so long as reasonable and justified. Burden upon Commonwealth, to prove beyond a reasonable doubt that motive, time, place, means and conduct concurred in pointing out the accused as perpetrator of crime, satisfied.

Error to a judgment of the Circuit Court of Arlington County.
Hon. Charles S. Russell, judge presiding.

Affirmed.

Thomas J. Harrigan (Harrigan and Morris, on brief), for plaintiff in error.

C. Tabor Cronk, Assistant Attorney General (Andrew P. Miller, Attorney General; Vann H. Lefcoe, Assistant Attorney General, on brief), for defendant in error.

HARMAN, J., delivered the opinion of the court.

This appeal is from a 20 year sentence pronounced by the trial court upon a jury verdict finding the defendant guilty of the first degree murder of George Lincoln Rockwell on August 25, 1967.

The testimony before the jury consumed approximately three weeks. The printed record is more than 1500 pages long.

We have examined each of the thirty-nine assignments of error filed by the defendant and find only two questions raised of sufficient substance to merit comment and discussion.

I

Did the court err in admitting in evidence certain shell casings and spent bullets discovered and seized on the farm of Sam Ervin in Highland County?

Sam Ervin is the father of defendant's wife. The evidence shows that defendant, his wife and their children lived with Sam Ervin, his wife and children. Ervin, in his testimony, said that defendant was a part of his "family." Ervin owned a house at 2522 Lee Highway in Arlington and another house on his farm in Highland County. He testified that Patler, as a member of his family, had a key and free access to both houses and that the family spent approximately half of the time at each.

On September 16, 1967, during their investigation of Rockwell's murder, the police interviewed Lester James "Tom" Miller who was employed as a laborer on Ervin's farm. Miller told them that he had seen the defendant target shooting with a pistol in a field on the farm sometime in July.

After receiving this information the officers proceeded to the Ervin farm for the purpose of obtaining Ervin's consent to inspect the field for shell casings and spent bullets. They did not find Ervin or anyone else at the dwelling house.

The officers left the farm, obtained a search warrant, and then returned to the farm where they encountered Miller and again talked with him. As a result of the officers' questions, Miller pointed out the area where he had observed Patler shooting in July. The officers

went to the dwelling, knocked on the door and ascertained that no one was there. They then posted the search warrant and proceeded to the field pointed out by Miller where the shell casings and spent bullets were discovered and seized.

The spent bullets were removed from a tree which was located about 250 feet from the dwelling house in a field described by some of the witnesses as a pasture. The shell casings were discovered in the same field approximately the same distance from the house and were 25 feet to 75 feet away from the tree where the spent bullets were found. The house and outbuildings adjacent thereto are surrounded by a fence which was built during the spring or summer of 1967. The spent bullets and shell casings were approximately 200 feet outside of this fenced area.

A pretrial hearing was conducted on a motion by the defendant to suppress these shell casings and spent bullets.

At this hearing several photographs were presented showing the dwelling and the fenced area around the dwelling. Other photographs were introduced showing the field where the seized items were found and its proximity to the house and yard. It was established that the farm was not posted against trespassers. Evidence was introduced showing the location of the various outbuildings and the purposes for which they were used. The evidence discloses there is a dry creek bed or ditch and a small branch or creek between the yard fence and the place where the controverted items were found.

Patler presented evidence that the field was regularly mowed and was used occasionally as a picnic area for the family. There was evidence that the Patler and Ervin children played in the field "quite a bit" and had erected a "fort" of rough boards there during the summer of 1967.

The trial court held the search warrant to be invalid because of an insufficient affidavit, a ruling that is not challenged here. It ruled, however, that the defendant's motion to suppress should be denied as a search warrant was not required to conduct this search under the open field doctrine recognized by this court in *McClannan v. Chaplain*, 136 Va. 1, 116 S.E. 495 (1923). To reach this conclusion the court made a determination that the yard fence established the curtilage and that the field was outside the curtilage.

Patler argues that even if the field was outside the curtilage the items seized were the fruits of an illegal search warrant and a failure to

suppress them would be a violation of his rights under the Fourth Amendment to the United States Constitution.

[1] This argument must fail for it is well established that "... the special protection afforded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law. 4 Bl. Comm. 223, 225, 226." *Hester v. United States*, 265 U.S. 57, 59, 44 S.Ct. 445, 446, 68 L.ed. 898, 900 (1924).

"Ever since this Supreme Court pronouncement in *Hester*, the 'open field' doctrine has been uniformly recognized and applied where, under the facts of a particular case, it was held that the search and seizure had occurred in an open field." *Wattensburg v. United States*, 388 F.2d 853, 856 (9th Cir. 1968).

[2] The real issue, therefore, is raised by defendant's argument that the trial court erred in finding the field to be outside the curtilage. He contends that this finding is contrary to the evidence.

"The curtilage of a dwelling house is a space necessary and convenient, habitually used for family purposes and the carrying on of domestic employment; the yard, garden or field which is near to and used in connection with the dwelling." *Bare v. Commonwealth*, 122 Va. 783, 795, 94 S.E. 168, 172 (1917).

When we apply the holding in *Bare* to the facts of this case it is apparent that the latter argument must also fail.

The evidence discloses that the area around the dwelling and out-buildings habitually used and necessary and convenient for family purposes was enclosed by a substantial fence. When such a fence is erected it ordinarily defines the curtilage, particularly in a rural area. The evidence further shows that the field was used only four or five times during 1967 for family picnics. While the field was regularly mowed, this is what one would ordinarily expect to be done to a pasture field in which no livestock grazed.

The only other evidence of family use was that Patler's son, age 3, and Ervin's twin sons, age 10, played there "quite a bit" and built a "fort" there in the summer of 1967.

We hold this evidence insufficient to establish the necessity, convenience and habitual use for family purposes which would be required in order to extend the curtilage to include the field.

II

Was the evidence sufficient to support the jury's verdict?

The evidence establishes that Rockwell, head of the nazi party in America, died on August 25, 1967, after being shot twice in the chest at approximately 11:58 a.m. by an assailant who fired the shots from the roof of a shopping center on Wilson Boulevard in Arlington County. Rockwell had just entered his parked car in the shopping center lot when the shots were fired. The shots penetrated the windshield of the car before striking Rockwell. After being fatally wounded Rockwell opened the right front door and got out of the car; he pointed to the roof of the shopping center and then collapsed and died near the right rear of the car.

The shopping center is bounded on the south by Wilson Boulevard, a busy thoroughfare running east and west, and on the east by Liberty Street. The north line of the shopping center abuts the rear yard of a block of houses which face on 9th Street. A person traveling north on Liberty Street from Wilson Boulevard would first cross 9th Street and would then descend a hill. Liberty Street terminates at a railroad which is four blocks from Wilson Boulevard. Bon Air Park, which lies north, east and south of the point where Liberty Street terminates, can be reached by crossing the railroad right of way.

Mrs. Thelma Burgess, whose back yard adjoined the rear of the shopping center, heard a shot and looked toward the shopping center. She observed a man run across the roof of the shopping center and leave the rear of the roof by stepping on a brick wall separating the shopping center from the houses facing on 9th Street. She then observed him leave the wall and run across the parking lot of the shopping center. She was unable to identify this man or to describe him.

Mrs. Alma Kirkpatrick, who was just starting her parked car in the shopping center lot, saw a man on the brick wall. This man left the wall and ran across the parking lot passing her car. He then ran behind her car forcing her to stop. The man stopped, looked in the direction of Rockwell's car and then ran back to the wall and crossed it. She said the man was wearing a "brownish" or "dark brown coat" and that he looked "something like what Mr. Patler looks like."

James Cummings and Thomas Blakeney, two barbers employed at the shopping center, heard the shots. They ran outside where they were told by a bystander that the assailant had fired the shots from the roof. The two barbers ran to the rear of the shopping center where Cummings observed a man run across the corner of 9th and Liberty Streets. While Blakeney went to a nearby house to call

the police, Cummings followed the man and observed him run down the hill on Liberty Street in the direction of Bon Air Park. Cummings testified that this man had on "dark clothing" and had "dark hair."

Rebecca Middleton and Mrs. Mary Ratchford, who were standing at the front door of the Ratchford residence across 9th Street from the shopping center, observed a man run from the direction of the shopping center, cross 9th Street and go down Liberty Street toward Bon Air Park. Rebecca described this man, whose face she did not see, as having dark hair. She said he was wearing a dark coat. Mrs. Ratchford said the man had black wavy hair and was wearing a black raincoat.

Mrs. Nancy Ellen Thoburn, who was walking on Liberty Street toward Wilson Boulevard, observed a man run across the intersection of 9th and Liberty Streets. She described him as being a young man of medium build with dark hair and a dark complexion. Her testimony was that he was wearing a hat, casual shoes and a loose fitting dark or dark gray outer coat. She observed that his pants legs were wet halfway to the knees and that he ran down Liberty Street toward Bon Air Park.

Glenn Frazier Hall, who lives at 934 North Liberty Street, parked his car in the driveway of his residence at a time he estimated to be four or five minutes after noon. As he alighted from his car he observed a man running down Liberty Street toward Bon Air Park. He identified the defendant as this man. Hall testified that Patler was wearing "a dark coat, which seemed to be a serge or a raincoat; he had on a gray cap of some sort." On cross-examination Hall testified that he had told the police on at least two occasions that he could not positively identify the man. He said, however, that he became positive that Patler was the man he had observed when he saw Patler's picture in a newspaper on the morning of August 27.

Other witnesses testified that they saw or heard a man run down Liberty Street in the direction of Bon Air Park but none of them could identify the man.

The police were notified of the shooting at 12:02 p.m. and they began an immediate investigation. This investigation disclosed that a man had been observed running from the shopping center down Liberty Street in the direction of Bon Air Park, which was approximately four blocks from the shopping center. A large number of

police officers were sent to the area surrounding the park to conduct an intensive search for the assailant.

Inspector R. S. Cole, one of the officers conducting this search, was driving his car west on Washington Boulevard at a point about one mile from the shopping center. At approximately 12:25 p.m. he saw a dark-haired man wearing dark trousers walking east on the north side of Washington Boulevard. Cole was driving an unmarked police car. He was wearing a police uniform and cap. The man Cole observed was wiping his face with a large turkish towel as the officer passed him. The officer turned his car onto a side street and went around the block for the purpose of intercepting this man. When the officer again reached Washington Boulevard he saw the same man at a bus stop at Washington Boulevard and Inglewood Street. When the officer reached a point near the bus stop, the man ran from the bus stop in a southerly direction between two houses. Inspector Cole drove his car around the block twice in an unsuccessful effort to find the man. At 12:28 p.m., as Cole was preparing to search a wooded area near the bus stop, he received a radio call from another policeman, Detective Ernest R. Davis, asking him to come to Washington Boulevard and Harrison Street, a point two blocks east from where he had last seen the man.

Upon Cole's arrival there he found Patler, whom he had known for about seven years, in the custody of Detective Davis and two other police officers.

At the time of defendant's arrest he had no identification on his person. He was sweating profusely. He was wearing dark trousers, a yellow or tan shirt, tennis shoes and had a bath towel draped around his neck. His tennis shoes were wet, his trousers were wet to above the knees and his shirt was wet, especially on the back.

On the afternoon of August 25 a reversible raincoat, black on one side and tan on the other, and a gray or bluish gray cap were found under a bush on a lawn near the point where Liberty Street terminates. The coat was identified as belonging to Patler by a man who formerly roomed with him. Another witness testified that he had seen Patler wear a similar coat on many occasions.

A Mauser pistol, identified by ballistics experts as the murder weapon, was recovered from a creek in Bon Air Park on August 26. This gun is unusual in appearance and is heavier than most hand guns. It has an overall length of 12 inches and it weighs about three pounds

when loaded. The place where the gun was found was about midway between the shopping center and the place where Patler was arrested.

Robert A. Lloyd, III, testified that he had purchased this gun bearing serial no. 9811 in March, 1962. His evidence in this regard was confirmed by the records of the gun dealer from whom it was purchased. Lloyd testified that he became acquainted with Patler in 1963 after Lloyd joined the nazi party. He testified that he loaned this pistol to John Patler in the fall of 1964. When he asked Patler to return the gun in 1965, defendant told him that the gun was either mislaid or stolen. Lloyd further testified that the gun was never returned to him by Patler.

Another nazi, Robert Lee Pace, testified that defendant was in possession of a Mauser "broomstick" pistol, the same type gun as the death weapon, in January or February of 1966.

A ballistics expert from the Federal Bureau of Investigation testified the shell casings and spent bullets seized on the Ervin farm were fired by the murder weapon.

On August 24, the day before Rockwell's death, almost 3½ inches of rain fell in Arlington County. This rain had terminated between midnight and 1:00 a.m. on August 25. The roof of the shopping center where Rockwell was shot had been giving difficulty for a prolonged period of time. The drainage system on the roof appears to have been defective and the tenants were complaining of water damage. At noon on August 25 from two to six inches of water were standing in various places on the roof.

Patler had been a nazi since 1960. Prior to April, 1967, he held the party rank of captain and was the editor of a party publication. A series of arguments and disagreements which became progressively more heated developed between defendant and Rockwell. As their relationship worsened, charges and counter charges were leveled by each against the other. On March 30, 1967, Rockwell, as head of the organization, relieved Patler of his duties as editor of the party publication. On April 4 Patler was summarily dismissed from the party at Rockwell's direction. In June Patler made a statement on three separate occasions to Christopher Vidnjevich, a party member, that "Rockwell is an evil genius and he must be stopped." Vidnjevich described defendant as "very bitter" about his dismissal from the party and quoted him as saying "We're going to stop him." At that time defendant was attempting to organize a group that he called "White Power Committee."

The testimony of other witnesses corroborates the strained relationship between Rockwell and Patler and the feeling between them that resulted from the arguments between them and defendant's dismissal from the organization.

Patler, who testified in his own defense, denied firing the fatal shots. He testified in detail as to his whereabouts on the day Rockwell was killed. He acknowledged that his relationship with Rockwell was strained. He said his differences with Rockwell were political and denied that he was angry with Rockwell or bitter toward him. He denied threatening Rockwell.

Defendant denied being in the vicinity of the shopping center for a week before the shooting. The Commonwealth's rebuttal evidence showed Patler was in the vicinity of the shopping center on either August 23 or 24.

Two witnesses testified that the Mauser pistol was in Lloyd's possession during the fall of 1965. Several witnesses, including Patler's wife and father-in-law, testified about defendant's movements on the day of the shooting. This alibi testimony placed him approximately three miles from the shopping center at or a few minutes before noon on August 25. Patler did not have a drivers license and he did not own or have access to a car.

Patler's explanation at the time of his arrest of his wet shoes and pants was that he had been walking through wet grass and had been striking shrubbery with his hands.

Certain scientific tests were performed on the shoes and clothing defendant was wearing when arrested. Tests conducted of Patler's clothing for residuals commonly associated with the recent firing of a weapon were negative. Negative results were obtained in the comparison of microscopic residue from Patler's clothing against soil samples from the escape route and paint samples from the roof of the shopping center. Footprints found on the roof of the shopping center did not match Patler's shoes but it was shown that two workmen had been on the roof earlier the same day.

Tar was discovered on the soles of the shoes worn by defendant at the time of his arrest. This tar was compared to tar samples from the roof of the shopping center. The expert testimony established that neither tar sample contained any impurities and an opinion was rendered that it was not possible to say that the tar on Patler's shoes came from the roof.

Defendant argues that the evidence outlined above is wholly circumstantial and that it is insufficient to support his conviction.

[3] It is fundamental that when the sufficiency of the evidence is challenged after conviction it is our duty to view it in the light most favorable to the Commonwealth, granting all reasonable inferences fairly deducible therefrom. The judgment should be affirmed unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it. Code § 8-491; *Cameron v. Commonwealth*, 211 Va. 108, 175 S.E.2d 275 (1970); *Corbett v. Commonwealth*, 210 Va. 304, 171 S.E.2d 251 (1969); *Jones v. Commonwealth*, 210 Va. 299, 170 S.E.2d 779 (1969).

[4] Where the proof relied upon by the Commonwealth is largely circumstantial, as it is here, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence. They must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. To accomplish that, the chain of necessary circumstances must be unbroken and the evidence as a whole must satisfy the guarded judgment that both the corpus delicti and the criminal agency of the accused have been proved to the exclusion of any other rational hypothesis and to a moral certainty. Yet what inferences are to be drawn from proved facts is within the province of the jury and not the court so long as the inferences are reasonable and justified. *Boykins v. Commonwealth*, 210 Va. 309, 312, 170 S.E.2d 771, 773 (1969); *Braxton v. Commonwealth*, 209 Va. 750, 752, 167 S.E.2d 120, 122 (1969); *LaPrade v. Commonwealth*, 191 Va. 410, 418, 61 S.E.2d 313, 316 (1950).

The burden is upon the Commonwealth to prove beyond a reasonable doubt that motive, time, place, means and conduct concur in pointing out the accused as the perpetrator of the crime. *Boykins v. Commonwealth*, *supra*; *Abdell v. Commonwealth*, 173 Va. 458, 470, 2 S.E.2d 293, 298 (1939); *Dean v. Commonwealth*, 73 Va. (32 Gratt.) 912, 926 (1897).

We find the evidence to be sufficient to support the conviction. Defendant's motive and his threats against Rockwell were shown by the direct evidence of Vidnjovich.

Patler was recognized and his conduct was related by Hall who saw and identified him as he fled past Hall's house less than two blocks from the scene of the killing. The other witnesses saw and described a man fleeing from the scene and established his route of flight.

Patler's possession of the murder weapon in 1964 and 1966 was established by the evidence of Lloyd and Pace. That he continued to possess this gun was shown by the evidence seized on the farm in Highland County. The gun was abandoned and concealed between where defendant was seen and identified by Hall and the place of his arrest.

The wet condition of Patler's shoes and trousers was consistent with his presence on the roof where water was standing and the evidence of Mrs. Thoburn who saw him near the rear of the shopping center.

The coat found near the park was definitely identified as belonging to Patler. It was found at a place on the escape route and at a place Patler denied having been.

Defendant's flight from Inspector Cole on Washington Boulevard and his profuse sweating at the time he was apprehended are circumstances which the jury was entitled to consider.

From these facts and the unbroken chain of circumstances disclosed by the evidence the jury had a right to conclude that the Commonwealth had met its burden of proving beyond a reasonable doubt that motive, time, place, means and conduct had concurred in pointing to the defendant as the murderer. We, likewise, find this evidence consistent with the defendant's guilt and inconsistent with his innocence.

For these reasons the judgment of the trial court is affirmed.

Affirmed.

U.S. Court of Appeals Fourth District Verdict,
Patler v. Slayton
8/28/1974

John PATLER, Appellant,

v.

A. E. SLAYTON, Jr., Superintendent of
the Virginia State Penitentiary,
Appellee.

No. 73-1169.

United States Court of Appeals,
Fourth Circuit.

Argued April 1, 1974.

Decided Aug. 28, 1974.

State prisoner sought habeas corpus. The United States District Court for the Eastern District of Virginia, at Richmond, Robert R. Merhige, Jr., J., 353 F.Supp. 376, granted respondent's motion for summary judgment, and prisoner appealed. The Court of Appeals, Craven, Circuit Judge, held that flagrant police violations of showup standards did not require that conviction be set aside where one witness testified only that person she had seen at scene of crime "looked something like" defendant while other testified only that she informed police officer after showup that appearance of defendant was not "in conflict" with that of the person she had seen; that defendant had standing to raise Fourth Amendment objection with respect to bullets and shell casings seized from pasture on farm owned by father-in-law, but had no reasonable expectation of privacy with respect to such area; and that disclosure of the results of scientific tests made by the FBI on certain physical evidence was timely where it was made, late in the trial, at the time when the evidence was introduced.

Affirmed.

1. Criminal Law §641.12(2)

Fact that defense counsel was present at preliminary hearing which one witness attended in order to view defendant and was present in police station hallway where defendant, handcuffed, was escorted past second witness

by several policemen was not enough to satisfy defendant's Sixth Amendment rights, and did not render Wade-Gilbert exclusionary rule inapplicable, since those decisions require informed presence of counsel and since counsel in the instant case had no notice of the presence of the witnesses. U.S.C.A.Const. Amend. 6.

2. Criminal Law §641.2

Adversary judicial criminal proceedings had been initiated against defendant such that right to counsel had attached when he thereafter was viewed by witnesses, where defendant had already been served with warrant charging him with first-degree murder, had been confined several hours, and his attorney was present at police station at the time the first showup viewing occurred.

3. Criminal Law §339

Failure of a witness to make a positive, in-court identification cannot be used by the state to insulate its improper identification procedures from scrutiny but trial judge may properly undertake to separate tainted matter from that which the witness actually observed at the scene of the crime so as to avoid unnecessarily blunt application of exclusionary rule.

4. Criminal Law §1169.1(5)

Flagrant police violations of showup standards did not require setting aside conviction after witnesses testified at trial where one witness testified only that person she saw at scene of crime "looked something like" defendant while other witness was allowed to testify only that she told police officer following the showup that her impression was that there "wasn't any conflict" between defendant's appearance and appearance of man whom she had seen running from the scene.

5. Searches and Seizures §7(26)

Though possession of spent bullets and shell casings seized on farm owned by defendant's father-in-law was not an element of the first-degree murder of-

fense with which defendant was charged, defendant had standing to assert Fourth Amendment violation where he had a possessory interest in the property searched and where the search was specifically directed against him. U.S. C.A.Const. Amend. 4.

6. Searches and Seizures §7(10)

Seizure of spent bullets and shell casings from picnic and play area on farm owned by defendant's father-in-law and frequently used by defendant and his family did not violate defendant's Fourth Amendment rights where the area in question, which defendant had used for target shooting, was located 250 feet from dwelling house and about 200 feet outside fence which enclosed house and outbuildings, so that defendant, even if he had exhibited an actual expectation of privacy in that area, had no reasonable expectation of privacy in the property searched. U.S.C.A.Const. Amend. 4.

7. Criminal Law §700

Assuming that certain scientific tests conducted by the FBI on physical evidence in murder prosecution resulted in exculpatory evidence which the prosecution had affirmative duty to disclose upon request, such duty was satisfied, despite contention that disclosure was not timely, where the test results were disclosed, late in the trial, at the time the physical evidence was introduced and disclosure was in time to allow a thorough and searching cross-examination by defendant's counsel.

8. Criminal Law §700

Affirmative duty of the prosecution to disclose exculpatory evidence on request does not require pretrial discovery.

Elise B. Heinz, Arlington, Va., for appellant.

Linwood T. Wells, Jr., Asst. Atty. Gen. (Andrew P. Miller, Atty. Gen., on brief), for appellee.

503 F.2d—3015

Before BOREMAN, Senior Circuit Judge, and CRAVEN and WIDENER, Circuit Judges.

CRAVEN, Circuit Judge:

John Patler was found guilty by a jury in the Circuit Court of Arlington County, Virginia, of the first degree murder of George Lincoln Rockwell, the head of the American Nazi Party. Patler was apprehended about one-half hour after the homicide less than a mile from the scene of the crime. The complex, "largely circumstantial" web of evidence upon which the jury verdict rested is set out in the opinion of the Supreme Court of Appeals of Virginia, which held that the verdict was based on sufficient evidence. *Patler v. Commonwealth*, 211 Va. 448, 452-456, 177 S.E.2d 618, 621-624 (1970). The United States Supreme Court denied a petition for certiorari on June 12, 1972.

On October 9, 1972, Patler sought a writ of habeas corpus from the United States District Court for the Eastern District of Virginia under 28 U.S.C. § 2254. Three errors of constitutional magnitude were alleged: (1) that the identification testimony of two witnesses at petitioner's state trial was tainted by their presence at illegal show-ups and should have been excluded under *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967), and *Gilbert v. California*, 388 U.S. 263, 87 S.Ct. 1951, 18 L.Ed.2d 1178 (1967); (2) that the seizure of certain inculpatory evidence from a farm owned by Patler's father-in-law constituted an illegal seizure in violation of his [Patler's] fourth amendment rights; and (3) that the state's failure to release the results of tests on physical evidence introduced at trial until late in the proceedings, which evidence tended to exculpate the petitioner, was prejudicial to his defense and contrary to the due process requirements of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The district court, without a hearing, granted respondent's motion for

summary judgment. *Patler v. Slayton*, 353 F.Supp. 376 (E.D.Va.1973). We affirm.

I.

At about noon on August 25, 1967, Mrs. Alma Kilpatrick was backing her car from a parking space at a small shopping center in Arlington, Virginia, when she saw a man appear on the brick wall in front of her. He jumped down, ran behind her car, looked toward the area of the parking lot where Rockwell's body was later found, turned and ran back over the wall. Upon being asked at

1 if she could describe the person whom she saw, Mrs. Kilpatrick responded:

A. I believe that he was dark haired and he had either a brownish or a dark brown coat on, and he looked something like what Mr. Patler looks like.

Q. Where did you see Mr. Patler?

A. I saw Mr. Patler again in the courtroom.

Transcript 523. Mrs. Kilpatrick talked with police on the day after the shooting. Shown two different photographic spreads containing Patler's picture, she was unable to make a positive identification. It was then suggested that she attend Patler's preliminary hearing to obtain a view of the suspect. Failing to gain an unobstructed view of Patler, Kilpatrick came to a second hearing.

She at first declined to make a positive identification after the hearing, then changed her mind and informed the police that she could identify Patler, and finally concluded that she could not. On

voir dire examination she stated: "I have decided to say I can't positively because I know that would be a crime, that would be terrible. I can't do that." Transcript 543.

On this same day and at about the same time, Mrs. Nancy Thoburn was returning from Bon Air Park (located about four blocks from the shopping center where the shooting occurred) with her three children. As she walked up Liberty Street in the direction of the shopping center she saw a man running down the opposite side of the street in the direction of the park. Noticing him "because of his hurry," she testified that she described him to a detective who interviewed her that same day as having "dark hair," "a dark complexion," and "was of medium build and height." Transcript 628. She further described his clothing:

He was wearing a long coat of some type, although I can't exactly identify it in every detail, but it appeared to be a neutral color. Also, his pants impressed me as being a dark gray, and he wore a hat; and I noticed one thing that stood out was that his pants' legs were wet.

Transcript 628. Later that same day Mrs. Thoburn went to the police station. She was seated on a bench together with three other potential witnesses outside of the room in which Patler was confined. Patler, handcuffed and escorted by several policemen, was led by the bench as he was transferred from one room to another.¹ The state trial judge, describing the show-up as "the worst

1. Mrs. Thoburn described the scene on voir dire examination:

Q. Did you go down to the police station on the 25th?

A. Yes.

Q. How many other people were down there?

A. There were three other witnesses there.

Q. Did you know what you were going down there for?

A. To give a description. I thought I was going down there to see if I could identify the man that I saw running.

Q. Where did you go in the police station?

A. To the detective's office.

Q. That is the third floor?

A. I guess it is; I couldn't say right now.

Q. Were you in the hall there?

A. We were in the office, and Mr. Patler's lawyer would not let us look at him.

Q. Who was that lawyer?

A. Mrs. Lane, I guess.

Q. She would not let you look at him?

A. That was the reason we were given for sitting so long in the office.

Q. Who gave you that reason?

possible kind," refused to allow Mrs. Thoburn to testify as to "any identification subsequent to that made at the police station." Transcript 622-23. But the following testimony by Mrs. Thoburn was allowed:

Mr. Hassan: Did there come a time when you made any statement to the police officers concerning what you have just described and its relationship to any picture or live viewing of Mr. Patler?

[Commonwealth's Attorney]

Mr. Harrigan: Objection, Your Honor.

[Patler's Attorney]

The Court: The objection is overruled.

Mr. Harrigan: Exception.

The Witness: I had an opportunity to see Mr. Patler at the police station the same day, August 25th.

Mr. Harrigan: I object to that, Your Honor.

Mr. Hassan: What she told the police.

The Court: We just want to know what you told the police officer about your impressions of Mr. Patler.

The Witness: At that time I recall seeing—when I say seeing—when I was asked if I could make an identification, I said that there wasn't any conflict in his appearance to the man I had seen, that there was nothing about him that conflicted my mental picture of what I had seen earlier that day.

Transcript 630-31.

[1] The Commonwealth argues that because the testimony of Mrs. Kilpatrick and Mrs. Thoburn was inconclusive and did not rise to the level of positive identification and because counsel was at all times present at (although admittedly uninformed of) the challenged show-ups, the *Wade-Gilbert* exclusionary rule does not apply and the testimony must be

tested only under the "totality of the circumstances" as prescribed in *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967), and explained in *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

The contention that the presence of counsel at these show-ups is enough to satisfy *Wade* and *Gilbert* flies in the face

- A. The detectives. I don't know; that was what I heard. I did not see Mrs. Lane that day, period. This is the reason that I was given why we were kept waiting because his lawyer, whoever it was, would not let us see him.
- Q. All right. Did they come out and finally tell you okay?
- A. No, they did not.
- Q. What happened?
- A. They put a bench for us beside the elevator so that when he was changed from one room to another and

brought down the hall that we would catch a glimpse of him then.

Q. Was he brought down the hall?

A. Yes.

Q. How many detectives were holding onto him?

A. I know there were at least two escorts.

Q. Was he handcuffed?

A. Yes.

Q. Was it pretty obvious who the defendant was and who the detectives were?

A. Yes, indeed.

Transcript 604-05.

of the sixth amendment right sought to be protected. Both *Wade* and *Gilbert* speak in terms of informed presence, i. e., notice.² 388 U.S. at 237, 269, 87 S. Ct. 1967. The fact that Patler's counsel was present both in the hallway at the police station where Mrs. Thoburn and the other potential witnesses were seated and at the preliminary hearing which Mrs. Kilpatrick attended does not enable the Commonwealth to escape the strictures of the Supreme Court's mandate.

[2] The state argues further that since Patler had not been indicted and the Commonwealth had not "committed itself to prosecute" [*Kirby v. Illinois*, 36 U.S. 682, 689, 92 S.Ct. 1877, 32 L. Ed.2d 411 (1972)] him, the *Wade-Gilbert* rule should not apply. The plurality opinion in *Kirby* does not set forth an "indictment" test but refers only to "the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." 406 U.S. at 689, 92 S.Ct. at 1882 (emphasis added). In a concurring opinion the Chief Justice added: "I agree that the right to counsel attaches as soon as criminal charges are formally made against an accused and he becomes the subject of a 'criminal prosecution.'" 406 U.S. at 691, 92 S.Ct. at 1883. There is no question but that Patler had already been served with a warrant charging him with first-degree murder, that he had been confined several hours and that his attorney was present at the police station at the time the show-up viewed by Mrs. Thoburn occurred. Mrs. Kilpatrick's viewing did not come until several weeks later. As to the show-ups viewed by both witnesses we find that

"adversary judicial criminal proceedings" had been initiated and that Patler was entitled to the informed presence of counsel under *Wade* and *Gilbert*.³ *United States v. Roth*, 430 F.2d 1137, 1140-1141 (2d Cir. 1970), cert. denied, 400 U.S. 1021, 91 S.Ct. 584, 27 L.Ed.2d 633 (1971). Cf. *Stanley v. Cox*, 486 F.2d 48 (4th Cir. 1973).

[3] Although the failure of a witness to make a positive, in-court identification cannot be used by the state to insulate its improper identification procedures from scrutiny, it is entirely possible, we think, for a skilled trial judge to separate the tainted matter from what the witness actually observed at the scene of the crime and thus avoid an unnecessarily blunt application of the exclusionary rule of *Wade* or *Gilbert*. That is what occurred here.

[4] We need not decide whether the improper show-ups might have suggested or strengthened Mrs. Kilpatrick's and Mrs. Thoburn's testimony in court, even to the point of positive identification, because the capable trial judge, alert to the problem, made certain that the questioning was limited to eliciting only what they saw at the scene and an inconclusive comparison with Patler's physical appearance. As to the latter he barely skirted constitutional error, for if there is a line between "resemblance" and "identification" testimony it is admittedly thin. But see *United States v. Brooks*, 146 U.S.App.D.C. 1, 449 F.2d 1077, 1083 (1971). Although thin, we think it a line worth drawing. Aside from police deterrence, the spirit of *Wade* and *Gilbert* is to prevent the conviction of those who may be innocent when a susceptible witness is unfairly

2. The following colloquy between the trial judge and the Commonwealth's attorney would tend to establish that there was no notice to Patler's attorney of the identification procedures:

The Court: Does the Commonwealth deny that his counsel was advised that he was to be shown to eye witnesses at that time?

Mr. Hassan: I don't think counsel was advised at any time. I don't think there is any requirement to advise counsel.

Transcript 621.

3. *Wade* and *Gilbert* are effective prospectively from June 12, 1967. *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). The identification procedures here challenged took place on or after August 25, 1967.

allowed to conclude: "he is the guilty one." It is far less dangerous to admit testimony, as was done here, that the malefactor was "dark haired" and "had a brown coat on" and "looked something like Mr. Patler," which was the gist of Mrs. Kilpatrick's testimony. We agree with the trial judge that:

At no point did she make a positive identification, but what identification she makes, dubious as it is, appears to me to be the direct product of what she saw while she was sitting in her car.

Transcript 559.

As for Mrs. Thoburn's testimony, the trial judge was even more cautious, recognizing that the state had arranged views of "the worst possible kind." He therefore limited her testimony to what she told the officers at the police station—something short of even "resemblance" testimony. Under the announced limitation Mrs. Thoburn described the clothing of the person seen near the place of the crime; and, in response to whether she could make an identification, failed to do so, saying only that the appearance of Patler was not "in conflict" with the person she had seen.

In declining to order a new trial despite flagrant police violations of show-up standards, we think we do no injury to the therapy of the exclusionary rule of *Gilbert*. For the lesson got to the trial judge and through him to the prosecutor and the police, and it is this: unfairly obtained identification testimony will not be freely received, and if allowed at all, it will be under such severe limitations that the prosecutor will be deprived of most of its potential for persuasiveness. Thus the purpose of the exclusionary rule, to deter the violation of the constitutional rights of those accused of crime, is served.

II.

[5, 6] Spent bullets and shell casings matching the murder weapon were seized from the pasture of a farm owned

by Patler's father-in-law, Sam Ervin. Testimony at trial tended to show that the area from which the inculpatory evidence was recovered was occasionally used by the two families as a picnic area and as a play area for their children and had within a month prior to the shooting been used by Patler for target shooting. It was located 250 feet from the dwelling house and about 200 feet outside a fence which enclosed the house and outbuildings. Although the trial court found invalid on its face a search warrant obtained by officers prior to the search, the evidence was not suppressed on the theory that the area searched was outside the curtilage. The Supreme Court of Appeals affirmed, specifically relying on the "open fields" doctrine of *Hester v. United States*, 265 U.S. 57, 59, 44 S.Ct. 445, 68 L.Ed. 898 (1924). *Patler v. Commonwealth*, 211 Va. 448, 449-451, 177 S.E.2d 618, 620-621 (1970). The district court agreed that the evidence should not have been suppressed, although it found *Hester* to be inapplicable in light of *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Instead the district court concluded that the use to which the area had been put was not such that Patler could "reasonably have expected privacy at the scene of the target shooting." *Patler v. Slayton*, 353 F.Supp. 376, 387 (E.D.Va.1973). Furthermore, the court held, he lacked standing to raise his fourth amendment contention, citing *Jones v. United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960); *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968); and *United States v. Cobb*, 432 F.2d 716 (4th Cir. 1970). With the argument that Patler lacks standing we cannot agree. In *Cobb, supra*, 432 F.2d at 719, we said:

In *Jones v. United States* . . . the Court, in construing Rule 41(e) which gives to any "person aggrieved by an unlawful search and seizure" the right to move to suppress evidence thereby secured, held that, "In order to qualify as a 'person aggrieved by

an unlawful search and seizure' one must have been a victim of a search or seizure, *one against whom the search was directed*, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else." (Italics added) 362 U.S. at p. 261, 80 S.Ct. at p. 731.

While possession of the evidence seized here was not an element of the offense charged, Patler demonstrated both that he had a possessory interest in the property searched,⁴ *Brown v. United States*, U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d (1973), and that the search was specifically directed against him. Having standing to raise the propriety of the search, Patler has, however, failed to demonstrate a reasonable expectation of privacy in the property actually searched. The maxim of *Katz* that the fourth amendment protects "people not places" is of only limited usefulness, for in considering what people can reasonably expect to maintain as private we must inevitably speak in terms of places. Speaking in such terms, we said under similar circumstances in *United States v. Brown*, 487 F.2d 208, 210 (4th Cir. 1973), cert. denied, 416 U.S. 909, 94 S.Ct. 1617, 40 L.Ed.2d 114 (1974):

Appellants' reasonable expectations of privacy—while extending to their

4. The record owner of the property, Sam Ervin, was Patler's father-in-law. The Patler and Ervin families resided in the same dwelling in Arlington, and both families used the Highland County farm frequently.

5. In his petition for certiorari to the United States Supreme Court petitioner itemized the various pieces of evidence, their relationship to the case against him and the results of scientific tests performed on them as follows:

During the afternoon of the day of the crime, a cap and a reversible coat, brown on one side and black on the other with a mutilated woman's pantyhose stuffed in one pocket, were found under a tree a few blocks from the scene of the crime. (Tr. 777, 794-95). On the afternoon of the next day, a 7.63 mm. Mauser pistol was found in a park several blocks away, lying

between two rocks in a creek in about six inches of water. (Tr. 1434-35) This proved to be the murder weapon. (Tr. 1707-8) It was identified as the property of Robert A. Lloyd, III, an active member of the Nazi Party, who testified that he had loaned it to petitioner in 1964. (Tr. 1806, 1812-13) Lloyd also testified that when he requested the return of the gun in 1965 petitioner told him it had been stolen or mislaid, and that the coat found under the tree "looked exactly like" one petitioner had worn. (Tr. 1813-14, 1824-25) Another Party member testified that the coat "is" petitioner's. (Tr. 1856) Petitioner denied that Lloyd had ever loaned him the gun and presented several witnesses who said they had seen it in Lloyd's possession after 1964. (Tr. 2469-70, 2178, 2276-76) The defense in-

See also *United States v. Minton*, 488 F.2d 37, 38 (4th Cir. 1973). Even if Patler could be said to have exhibited an actual expectation of privacy in the area searched, we cannot say that such an expectation is "one that society is prepared to recognize as 'reasonable.'" *Katz, supra*, 389 U.S. at 361, 88 S.Ct. at 516 (Harlan, J., concurring).

III.

[7] In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215 (1963), the Supreme Court announced the following constitutional principle:

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Petitioner alleges that his *Brady* rights were violated by the prosecution's failure to release the results of scientific tests made by the FBI on certain physical evidence until that evidence was introduced late in his trial.⁵ The district

between two rocks in a creek in about six inches of water. (Tr. 1434-35) This proved to be the murder weapon. (Tr. 1707-8) It was identified as the property of Robert A. Lloyd, III, an active member of the Nazi Party, who testified that he had loaned it to petitioner in 1964. (Tr. 1806, 1812-13) Lloyd also testified that when he requested the return of the gun in 1965 petitioner told him it had been stolen or mislaid, and that the coat found under the tree "looked exactly like" one petitioner had worn. (Tr. 1813-14, 1824-25) Another Party member testified that the coat "is" petitioner's. (Tr. 1856) Petitioner denied that Lloyd had ever loaned him the gun and presented several witnesses who said they had seen it in Lloyd's possession after 1964. (Tr. 2469-70, 2178, 2276-76) The defense in-

court correctly characterized the test results as "neutral" rather than "exculpatory." 353 F.Supp. at 388. But such a characterization often has little meaning; evidence such as this may, because of its neutrality, tend to be favorable to the accused. While it does not by any means establish his absence from the scene of the crime, it does demonstrate that a number of factors which could link the defendant to the crime do not. There was good reason for the state to introduce Patler's clothing and shoes and the murder weapon. Several witnesses had seen a man running from the scene of the crime dressed in similar clothing, and one witness testified that the coat found along the escape route belonged to Patler. The murder weapon, so the jury could have found, had been loaned to Patler several years earlier and shell casings and fragments fired from it were found on his father-in-law's farm. He had been seen target shooting there a month before the shooting. Clearly the evidence was relevant. But, to paraphrase what we said in *Barbee v. Warden*, 331 F.2d 842, 845 (4th Cir. 1964), "[o]nce produced, it became not only appropriate but imperative that

any additional evidence concerning [these items] be made available either to substantiate or to refute the suggested inference[s]." Admittedly, the ballistics tests under consideration in *Barbee* were of much greater benefit to the defense than the scientific tests in this case. But whether the tests here are "favorable" within the meaning of *Brady* we need not decide. Assuming that an affirmative duty existed which required disclosure by the prosecution, such a duty was here satisfied.

[8] Petitioner's argument rests, finally, on the assertion that disclosure was not timely. While there may be instances where disclosure comes too late to benefit the defendant, see, e. g., *Clay v. Black*, 479 F.2d 319 (6th Cir. 1973); *United States v. Gleason*, 265 F.Supp. 880 (S.D.N.Y.1967), this is not such a case. Once the physical evidence was introduced by the prosecution, disclosure of the test results was made immediately. There followed a very thorough and searching cross-examination by petitioner's counsel. In light of the fact that *Brady* does not require pretrial discovery,* *United States v. Harris*, 409 F.2d 77, 80-81 (4th Cir. 1969), cert. de-

produced a different black raincoat, found in petitioner's home the day after the crime, which he identified as his own. (Tr. 2562, 2464) The police delivered their items of physical evidence to the FBI, where they were subjected to all the usual scientific tests, as was the clothing worn by petitioner at the time of his arrest and the towel he was carrying. Before the trial petitioner's attorneys asked the trial court to order the reports of these tests and any exculpatory evidence possessed by the prosecution to be shown to defense counsel. This motion was denied. Late in the prosecution's case, the Commonwealth presented this evidence. Tests to establish whether the articles found under the tree or the towel had been associated with a firearm were negative. (Tr. 1709-11) So were tests attempting to associate any of these items with paint samples taken from the shopping center. (Tr. 1741-43) Petitioner's shoes could not have made the footprints found on the roof. (Tr. 1731-33) Soil found on petitioner's shoes did not match any of the 17 soil samples taken along the

escape route. (Tr. 1738-39) There were no hairs or anything else on the cap or the coat that could connect them to petitioner. (Tr. 1764) Neither the tar found on petitioner's shoes nor the tar taken from the roof contained identifying impurities; the expert witness declined to say they were identical, though he said they were similar: "Tar is tar." (Tr. 1745-46) There were no fingerprints on the murder weapon. (Tr. 1727-28)

6. Cf. Fed.R.Crim.P. 16(a)(1)(D), as amended (effective July 1, 1974):

Reports of examinations and tests.—Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph any results or reports . . . of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

42 U.S.L.W. 4555 (April 23, 1974).

nied sub nom., *Brown v. United States*, 396 U.S. 965, 90 S.Ct. 443, 24 L.Ed.2d 430 (1969), and in the absence of any demonstration of prejudice to his defense from the failure of the prosecution to make the disclosure at an earlier point in the trial, petitioner's assertion of untimely disclosure must fail. Where, as here, the disclosure is timely, i. e., occurring at or before the introduction by the prosecution of evidence to which the disclosed material logically relates and at a time when it can be meaningfully evaluated and utilized by the defense, there is no violation of due process.

The judgment of the district court is affirmed.

Affirmed.



UNITED STATES of America,
Appellee,

v.

Preston H. WILLIAMS, Appellant.

UNITED STATES of America,
Appellee

v.

Frankie Bell DUREN, Appellant.

Nos. 74-1257, 74-1258.

United States Court of Appeals,
Eighth Circuit.

Submitted Sept. 11, 1974.

Decided Oct. 3, 1974.

Defendants were convicted before the United States District Court for the Western District of Missouri, William Collinson, J., of transporting in interstate commerce a motor vehicle knowing the same to be stolen, and they appealed. The Court of Appeals, Matthes, Senior Circuit Judge, held that the "possession" element of the offense can be proven by

circumstantial evidence, that in resolving possession issue the court would review the evidence in the light most favorable to the jury verdict, that evidence supported conviction, that prosecutor's reference in closing argument to the "two scales of justice" was not objectionable as a subtle comment on defendants' failure to testify and that one defendant was not denied Sixth Amendment right to counsel at time he made certain exculpatory statements.

Affirmed.

1. Automobiles $\S$ 353

If it is shown that a defendant is discovered in possession in one state of a vehicle recently stolen in another state and the defendant is unable to satisfactorily explain his possession, a jury, in a Dyer Act prosecution, may reasonably infer that the defendant not only knew that the vehicle was stolen but also that the defendant has transported the vehicle, or caused it to be transported, in interstate commerce. 18 U.S.C.A. $\S$ 2312.

2. Automobiles $\S$ 355(12)

In a Dyer Act case, proof of possession of a stolen vehicle can be by way of circumstantial evidence; the jury must be free to intelligently review and evaluate all the evidence, drawing the logical consequences and inferences therefrom, in concluding whether possession has been established. 18 U.S.C.A. $\S$ 2312.

3. Criminal Law $\S$ 1144.13(2)

In resolving the possession issue the Court of Appeals, in a Dyer Act case, must review the evidence in the light most favorable to the jury verdict. 18 U.S.C.A. $\S$ 2312.

4. Automobiles $\S$ 355(12)

Mere presence in a stolen automobile, even with knowledge that it is stolen, cannot in itself serve as sufficient proof of possession to support a conviction under the Dyer Act. 18 U.S.C.A. $\S$ 2312.

5. Automobiles $\S$ 355(12)

Evidence, in Dyer Act case, on issue of possession was sufficient to support

Appendix 20

Federal Bureau of Investigation
Forensic and Ballistic Inquiry Files
August – December 1967



WILLIAM G. FAWCER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRGINIA

POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201

August 25, 1967



RAYMOND S. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. BELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

J. Edgar Hoover, Director
Federal Bureau of Investigation
Department of Justice
Washington, D. C.

Re: George Lincoln Rockwell
Offense: Murder

Attention: Laboratory

Dear Sir:

On August 25, 1967 at approximately 12:02 p.m. one George Lincoln Rockwell, white, male, was murdered in front of 6021 Wilson Boulevard, Arlington County, Virginia.

- Exhibit #1: 1 shell casing taken from roof of building at 6029 Wilson Blvd., Property #23871.
- Exhibit #2: 1 piece of projectile taken from the body of George Lincoln Rockwell stuck in the skin and T-shirt where bullet entered his heart.
1 ~~spent~~ ^{cartridge case} bullet found on ground or asphalt near auto of George Lincoln Rockwell, Property #23873.
- Exhibit #3: 3 plastic bottles with labels described below on property sheet #23874 taken from body of George Lincoln Rockwell at morgue at Arlington Hospital. Each bottle contains particle of projectile removed from body of Rockwell.

We are submitting these exhibits to determine if it is possible to know the size of the bullet used, type of weapon used as we are unable to locate the weapon used in the murder.

These exhibits have not been examined by any other expert.

Thank you for your usual cooperation.

10 AUG 28 1967

UNNAMED SUBJECT

Sincerely,

Walter E. Bell, Inspector
Acting Chief of Police

SEP 20 1967

Walt Bell
KH HHS EVIDENCE

Copy & specs retained in Lab
for Lab action & report

INDEXED

7C-A1015
5a KH

75-140215-2
REC-62
EX-115
75-170374-5

SECRET



WILLIAM G. FAWCER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRGINIA

POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201

August 26, 1967



RAYMOND S. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. BELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

J. Edgar Hoover
Director
Federal Bureau of Investigation
U.S. Department of Justice
Washington, D.C.

Ref. Rockwell, George Lincoln

Dear Mr. Hoover

A pistol, Mauser #9811 found in the Bon Air Park, the area under investigation in the above case, is submitted with a request that it be compared with material previously submitted in this case and other suggested tests. (This weapon has not been unloaded)

A reversible coat and a cap (Big Mac) are also submitted for examination at your option. There has been no expert examination conducted of the above material.

Yours truly

Walter E. Bell, Insp.
Acting Chief of Police

EX-115

REC-6

10 AUG 29 1967

INDEX LAB FILES

SEP 20 1967 Row.

Xcc to UFS
8-25-67

SEVEN

8-26-67
Copy & spec. retained in Lab
for Lab action & report

ACE A 1011 KH

Personal delivery

8/26/67

b7c

1A-KH

8-12

PC-A1021

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. W. C. Sullivan *WCS*

FROM : Mr. J. A. Sizoo *JAS*

SUBJECT: GEORGE LINCOLN ROCKWELL
AMERICAN NAZI PARTY
RACIAL MATTER

1 - Mr. C. D. DeLoach
1 - Mr. T. E. Bishop
1 - Mr. W. C. Sullivan

DATE: August 26, 1967

1 - Mr. I. W. Conrad
1 - Mr. C. D. Brennan
1 - Mr. J. A. Marion

Tolson ☒
DeLoach ☒
Mohr ☒
Casper ☒
Callahan ☒
Conrad ☒
Felt ☒
Gale ☒
Rosen ☒
Sullivan ☒
Tavel ☒
Trotter ☒
Tele. Room ☒
Holmes ☒
Gandy ☒

At 3 p.m., 8/26/67 Special Agent [redacted] of the Alexandria, Virginia, Resident Agency advised Duty Agent [redacted] that at approximately 2:30 p.m. a gun believed to be the murder weapon in the assassination of captioned individual was found by the Arlington, Virginia, Police Department.

[redacted] advised that the gun, a 30 caliber Mauser pistol, serial number 9811, was found in Bon Air Park in Arlington, about a quarter of a mile from where the shooting of Rockwell took place on 8/25/67.

[redacted] advised that the Arlington Police Department was bringing the weapon to the Bureau Laboratory on this date. Duty Agent Parsons of the Laboratory Division was notified of this fact.

ACTION:

None. For information.

PJT:as
(7)

WCS
0:4

676
776
95-142215-4
REC-60 105-70374-5105

9 AUG 30 1967

64 SEP 6 1967



WILLIAM G. FARVER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRGINIA

POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201



RAYMOND E. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. GELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

August 28, 1967

Rec'd Sp-ly b7c

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

Officer [Redacted]

Reference: Rockwell, George Lincoln - Murder

Dear Mr. Hoover:

PC-A1046 9-1 3a-12 8-OK

I am submitting a number of pieces of evidence in connection with the killing of George Lincoln Rockwell. The items listed are from four different sources and will be described in that manner:

- #1. Items removed from John Butler at the time of his arrest for the murder of George Lincoln Rockwell identified as Property No. 23879.
 1. 1 pair man's slacks, Farah make.
 2. 1 man's black belt.
 3. 1 pair man's black socks.
 4. 1 man's yellow shirt with thin red and gold stripes Penthouse make.
 5. 1 pair man's shoes, blue, Tredlite.
 6. 1 white towel.
- #2. The second group from inside a 1958 Chevrolet, Virginia 507-705 occupied by Rockwell at the time of the killing.
 - The first group will be seven bullet fragments identified as items 1 thru 7 of Property No. 23884.
 - The remains of one bullet fragment identified under Property No. 23882.

ENTRE SHOEPRINT

8-29-67
Copy & spec's retained in Lab for Lab action & report

INDEX LAB FILES

SEP 20 1967 KBW.
Will Pick-up
KH - HAS EVIDENCE

REC-28

EX 101

*75-140215-5
71-70317-5121*

4 AUG 31 1967

SOJEN

Mr. J. Edgar Hoover, Director
Washington, D. C.

Page 2

#3. Found in the home of John Patler.

1 cartridge case identified as Property No. 23881.

#4. Samples of material from roof of shopping center from which shots were fired at Rockwell.

2 pill boxes containing samples of tar from roof identified as Property No. 23885.

1 pill box containing green paint chips.

1 pill box containing white paint shavings identified as Property No. 23886.

1 pill box containing tar samples identified as Property No. 23883.

1 envelope containing lifted footprint impression identified as Property No. 23880.

8
Please compare articles in group #1 taken from John Patler with materials and prints in group #4 for identification. It is also requested that the towel in group #1 be checked for any method of identification as this may not have been the property of John Patler.

It is requested that bullet fragments listed in group #2 be compared with the Mauser and also be typed with the bullets which were previously submitted in this case. It is requested that the cartridge case submitted in group #3 be compared with the Mauser pistol and with the bullet previously submitted in this case. Material presented has not been subjected to any previous expert examination.

Your cooperation in this matter will be greatly appreciated.

Yours truly,

Walter E. Bell
Walter E. Bell, Inspector
Acting Chief of Police

WEB/de

REPORT
of the

1-Office, 7133

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

To: Mr. Walter E. Bell
Inspector
Acting Chief of Police
Arlington County Police Department,
Arlington, Virginia 22201

August 29, 1967

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation of a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL,
VICTIM; MURDER

J. Edgar Hoover
John Edgar Hoover, Director

YOUR NO.
FBI FILE NO.
LAB. NO.

PC-A1015 KH
PC-A1021 KH IZ

Examination requested by: Addressee

Reference: See below

Examination requested: Firearms - Microscopic - Fingerprint

Specimens: personally delivered on 8-25-67 by Officer [redacted]
under cover of letter dated 8-25-67 (PC-A1015 KH)

SEP 1 1967

- Q1 Bullet jacket (#2)
- Q2 - Q3 Two cartridge cases (#1 and #2)
- Q4 - Q6 Three lead fragments (#3)

Specimens personally delivered on 8-26-67 by [redacted]
under cover of letter dated 8-26-67 (PC-A1021 KH IZ)

- Q7 Coat
- Q8 Cap

K1 7.63 mm Mauser Military Pistol, Serial Number 9811,
with five cartridges

Results of examination:

This report confirms and supplements the telephonic reports which were furnished to your department on August 25, 26 and 28, 1967.

Page 1 WJG:nld (4)

MAIL ROOM TELETYPE UNIT ☐

(continued on next page)

MAILED 14
AUG 29 1967
COMM-FBI

ENCLOSURE ATTACHED

58 SEP 1 1967

63611
b7c

The bullet jacket and the two cartridge cases, specimens Q1 through Q3, were identified as having been fired by the K1 automatic pistol.

Specimen Q5 is the base portion of the lead core from a jacketed bullet. Specimens Q4 and Q6 are small fragments of lead. These specimens could have formerly been portions of the lead core from the bullet represented by the Q1 bullet jacket. However, there are not sufficient microscopic markings remaining on these specimens to determine their specific origin.

When received in the Laboratory, the K1 automatic pistol was loaded with five cartridges. One cartridge was in the chamber of the weapon and the other four cartridges were in the magazine. These cartridges were manufactured by the Belgian firm of Fabrique Nationale d'Armes de Guerre (FN). The Q1 bullet jacket and the Q2 and Q3 cartridge cases are the same in all observable physical characteristics as the same components which make up portions of these five cartridges.

Specimen Q7 is a well-worn reversible raincoat, black on one side and khaki on the other. Its size is approximately 36 short. No labels were found on Q7. No hairs were found in the pockets or on the outside of the coat.

A portion of a pair of panty-hose was found in a pocket of the Q7 coat. Several overhand knots are tied in the leg. A label on the waistband bears the following: "MEDIUM 100% STRETCH NYLON 5' 3" TO 5' 6". No hairs were found in the portion of a pair of panty-hose.

Specimen Q8 is a gray cotton visor cap and has a new appearance. A label in the cap bears the following: "BIG MURPH SANFORIZED WASHABLE UNION MADE 7 $\frac{1}{4}$." Products bearing this label are sold through G. C. Murphy Company stores. No hairs were found in the cap.

No visible or invisible laundry marks were found on Q7 or Q8 or on the portion of a pair of panty-hose.

You are being advised by a separate report as to the results of the fingerprint examinations which were conducted.

The above-listed items of evidence will be retained in the Laboratory until called for by a representative of your department.

Page 2
PC-A1015 KH

RECORDED
8/20/67
jfk

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # [REDACTED]
Lab. # PC-A1015 KH

Mr. Walter E. Bell Let. 8/25 EXPEDITE
Inspector

Examination requested by: Acting Chief of Police
Arlington County Police Dept.
Arlington, Va. 22201

Examination requested: Firearms (G&A)
Result of Examination:

Date received: 8/25/67 per del

Examination by: [REDACTED]

Per. del. on 8/25/67, by Officer [REDACTED]

8/25/67

626

Returned to

[REDACTED] 8-21-67

Specimens submitted for examination

- Q1 Bullet jacket (#2)
- Q2 - Q3 Two cartridge cases (#1 and #2)
- Q4 - Q6 Three lead fragments (#3)

John up

PCA 1015

Q1 Portion of bullet jacket - solid nose - open base
with rolled edge - Bright plated brass - 4
small impressions around skirt like those produced
by striking bullet into cartridge case - Likened
oil - hair & white fibers attached - 14 3/4 gr
No id marks observed - Qty on inside
appears to be 7.63 Hansen -

GR L. imp. .045 Feed marks
R. imp. .11

Q1-K1 Leads - Photo Q1-K1 48 m x 11 3 1/2 m (15x)

Q2-Q3

2 - 7.63 Hansen Cartridge Cases - ^{FN}* headstamps
brass with brass primer - Both have jacket
marks -- BF-FP-RXT & EJ, - each has four
stroke mark impressions

Q2 - "R" scratched near mouth - Q2 on inside mouth

Q3 "XX" scratched on side - Q3 on inside mouth

PC A1015

Q2-Q3 (B.P.)

Q3 (C.I.) has marks (impressions) on side
as though stepped on or caught - likely by 22

Both fired same weapon - Jolt & KI list
BF - FP - EXT - EJECTOR

Photo Q3-K1 72mm x 11 2m (9x)

Q3-K1 Extractor 48mm x 11 2m (15x)

Q4 Lead fragment - 4 gr - has blood & tissue-like
material - white fibers - no marks to identify
source - has one cut-like mark - Q4
scratched on side

Q5 Layer portion of lead core from bullet - 43 1/4 gr
tissue-like material clinging - has ring around
base portion where jacket was rolled in - suggestion
of striking impression - base is generally same
configuration as Q1 jacket - B scratched into base
Q5 by a flattened nose area - nose area has
appearance of striking glass - white powdery deposits in
dia. approx .22

PC A1015

Q5 (cont)

some small holes.

Q6 small piece of lead - 12 gr - no marks
to tell source - has fabric marks on side
either side roughened (glass?) - "T"
cut into one side Q6 by other -

Possible weapons

7.63 Mauser 045 .115
Sten 04 .11
(Full auto) 05 11
Gewehr 88 034 .125

TOKAREV (42)
7.62mm (03)

Weapons firing Caliber

ASTRA auto pistol Model 900

Sten auto (Shin)

AZUL " "

Union (French)

Royal " " (very GRC?)

ASTRA submachine gun

SCHWARZLOSE auto. pistol

DEHAUSEN " "
SCHNEIDER " "
SCHOTTHARD " "
VOLLMER " "

2-2

RECORDED
8/26/67
jfk

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

LATENTS

Laboratory Work Sheet

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File #
Lab. # PC-A1021 KH IZ

Mr. Walter E. Bell :
Inspector

Let. 8/26/67

Examination requested by: Acting Chief of Police
Arlington County Police Dept.
Arlington, Va. 22201

EXPEDITE

Examination requested:

Firearms (G&A) - Micro. (Fibers) -
Fingerprint

Date received: 8/26/67 per dc

Result of Examination:

Examination by: [REDACTED]

Per. del. on 8/26/67, by [REDACTED]

676

8/26/67

Q7-Q8 to Clark 8/26/67 return said del.

Returned to

8-31-67

Specimens submitted for examination

Q7 Coat
Qc Cap

K1 7.63mm Mauser Military Pistol, Serial Number 9b11, with five
cartridges

NCIC
NPSI

Do rec'd 8/26/67 Mr. Santambrogio

for at
10-9-67
[unclear]

PCA1021

K1 7.63mm MAUSER Military Pistol - SN 9811 - is the
standard arm with no changes noted - blue (appears
to be original finish) - standard wood grips -
WAFFENFABRIK MAUSER on right side of receiver
CBEKDORF A NECFAR

WAFFENFABRIK
MAUSER
CBEKDORF A/N

10 shot magazine

on top of barrel at rear - 5/2" barrel -
has a sliding thumb eye at bottom of grip -
has slot at bottom rear of back strap for attachment
of the stock - broken -

"B" scratched on magazine at bottom right foot - K14 top with trigger
was wet when received - sand in barrel &
in mechanism - barrel cleaned with swabs -
dried with air hose -

also loaded when received - 1 in chamber & four in
clip - FN * headstamp - were unloaded by cocking
action - each numbered 1 thru 5 from top down -

Weapon has the improved ^{removal} safety - (not marked with
SN) SN am 300000

PCA 1021

K1 (cup)

4 Tests fired

2.63m Mensor FK

*

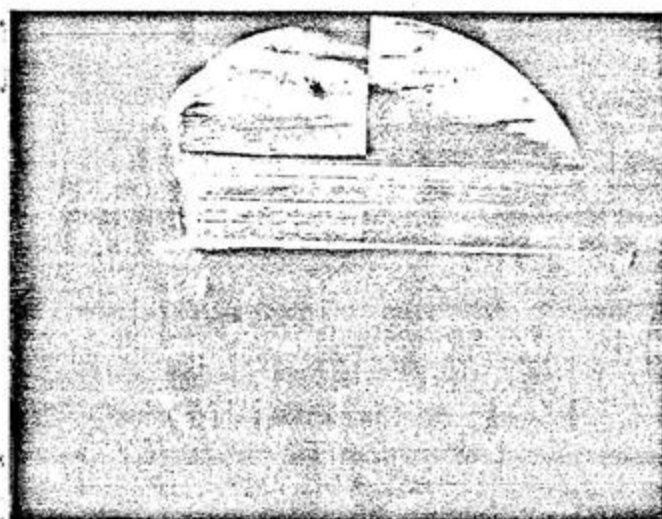
GP L. 045
S. 11

Tidbullen

average offset

25 3/4 m

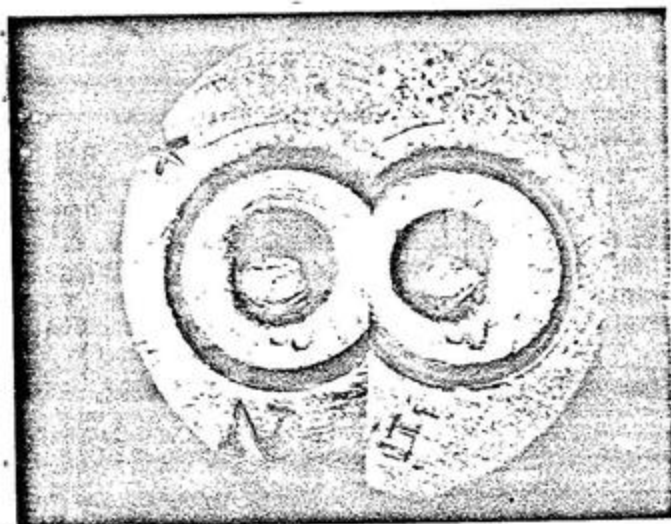
PC A1021



Q1

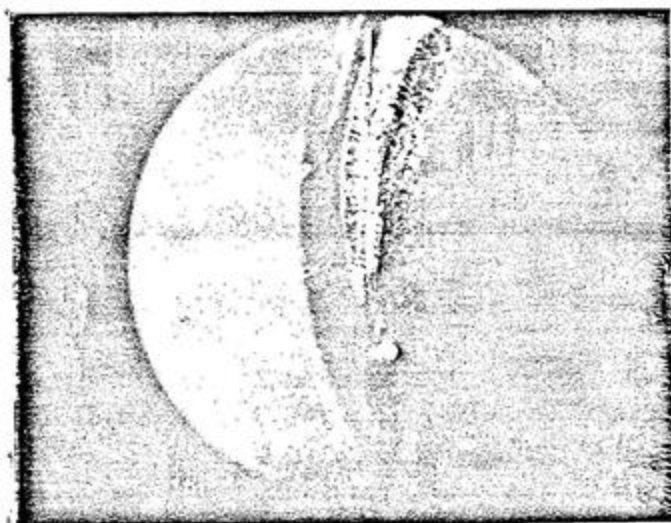
K1

PCA 1021



Q3

K1



Q3

K1

Extractor

08 Cap Gray cotton twill. (cloth
like cargo clothes). New appearance
Label:   Mfg. by G.C. MURPHY CO.
531 5th and
ACKERSPORT, PA.
PSAL U.S. Post off.

UNION LABEL: 81054 UNITED LABELS Co.

No hairs

No vis or inner tucks

07 coat

Reversible raincoat khaki on one side,
black on other. Dirty & well-worn
khaki outside when wet.

No hairs. ^{as photo on inside} vis or inner tucks

size as 35 short. No label

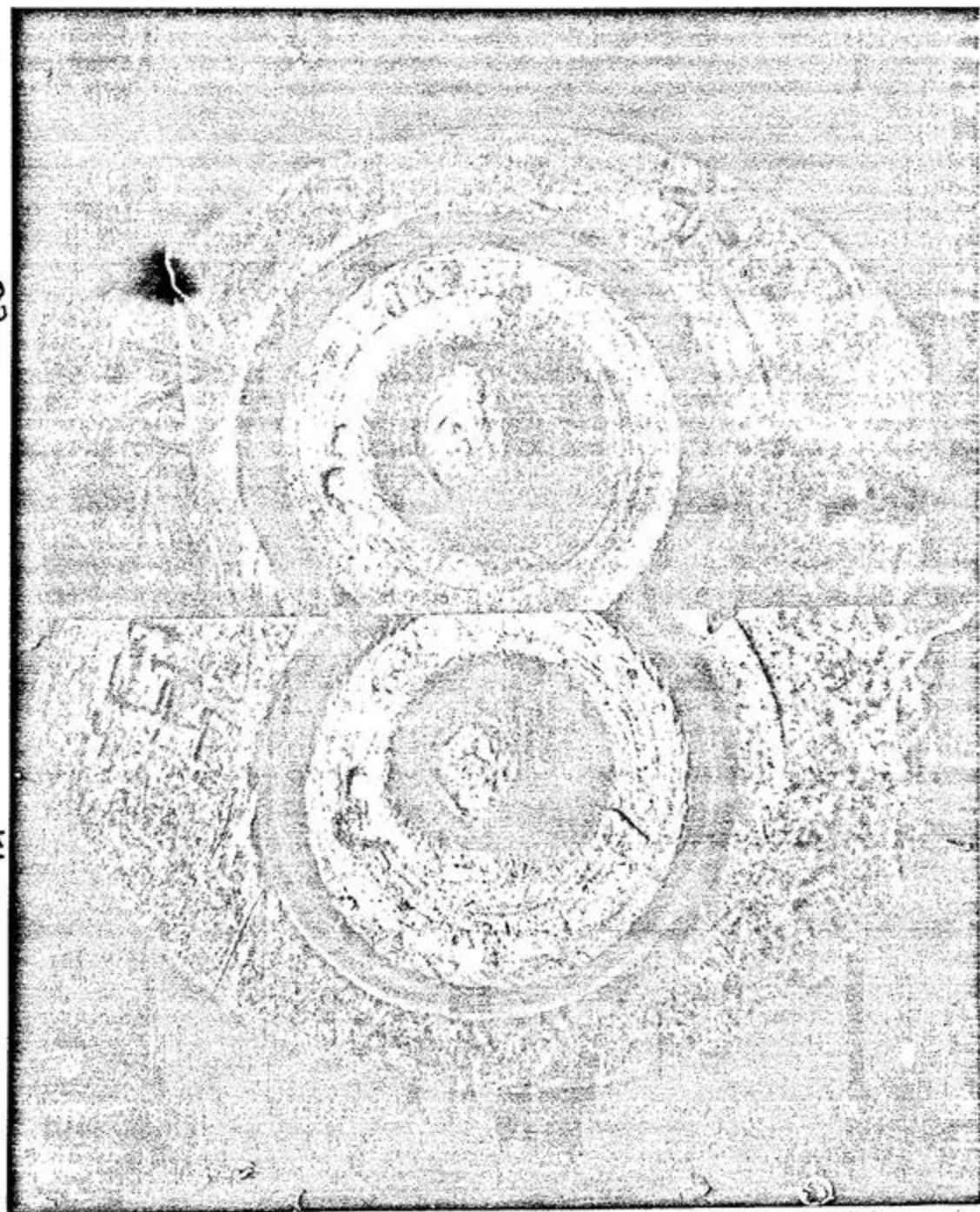
following in it inside pkt (ie. & khaki side out):

portion of a pair of pants - hole sew overhand to be
tied in lower part of leg. Knotted white knot
inside out. Label on waist

MEDIUM
100% STRETCH NYLON
5'3" x 5'6"

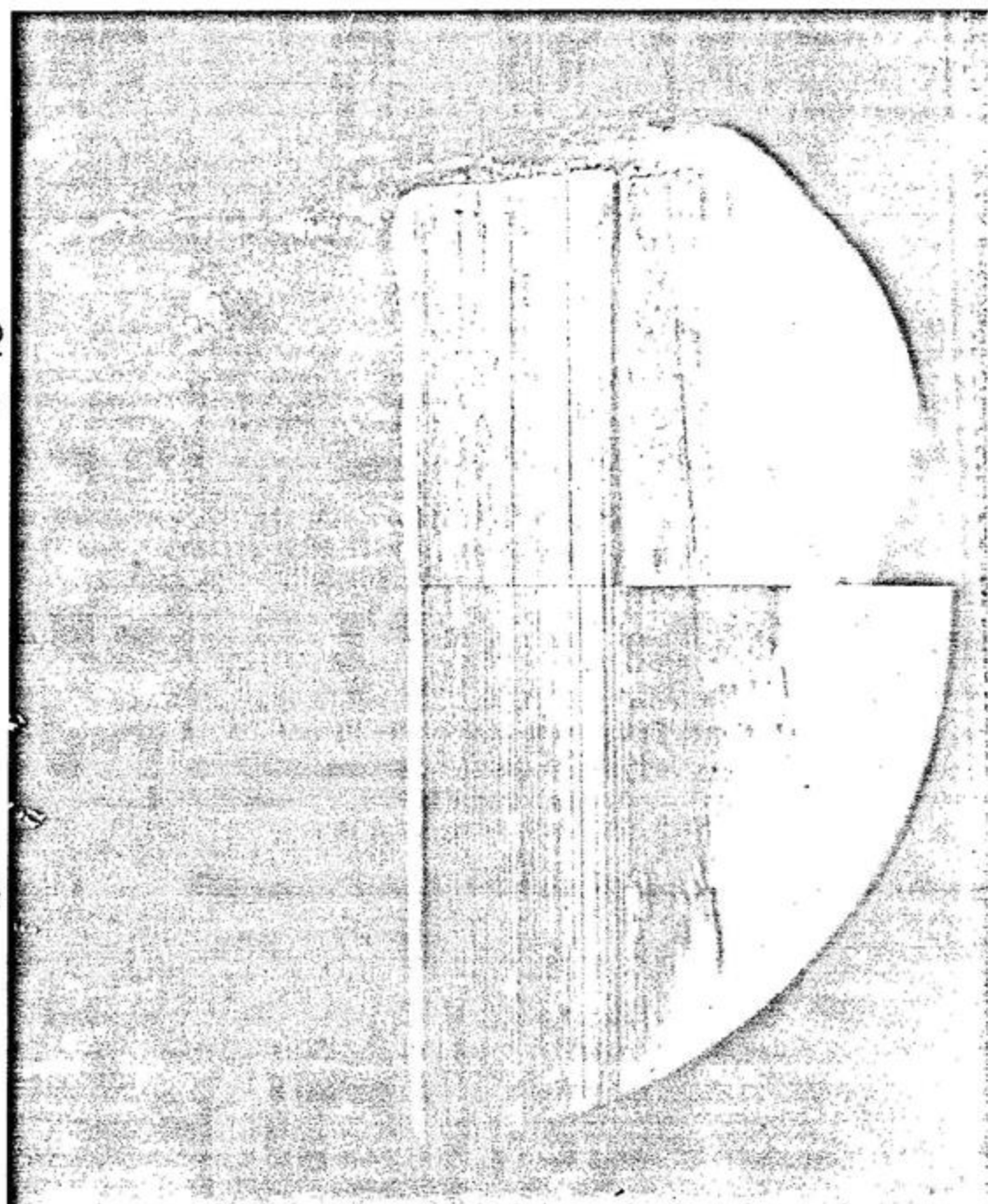
No vis or
inner tucks

No hairs. Inside out when fast. No inside of bands.



83

121



0

2

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

1 - Mr. Conrad
1 - Office, Room 7133

DATE: 8/30/67

FROM : R. H. Jevons

1 - Mr. Johnson

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

D.V.
Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

My memorandum of 8/29/67, advised that on that date the Arlington County Police Department had submitted additional evidence recovered in this case. This evidence included clothing from the suspect, bullet fragments from the Rockwell automobile, a cartridge case from the suspect's home, paint and tar samples and shoeprint lifts from the roof of the building from which the shots were fired at Rockwell.

The examination of this evidence has been completed with the following results:

Included in the bullet fragments was a bullet jacket which was identified as fired from the Mauser automatic pistol previously submitted to the Laboratory in this case. The other fragments could have formerly been portions of the bullet represented by this bullet jacket.

The cartridge case from the suspect's home is a different caliber from the bullets and cartridge cases recovered in this case and could not have been fired from the weapon which was recovered.

Tar on the suspect's shoes is like the tar samples from the building roof. However, small samples of tar lack sufficient individual identifying characteristics and the tar from the shoes cannot be specifically associated with the tar from the roof to the exclusion of other common sources. Small tarlike deposits were found on the left rear leg of the suspect's trousers. No paints were found on the suspect's clothing which could be associated with the paint samples from the building.

1 - Mr. Mohr
1 - Mr. DeLoach
1 - Mr. Bishop
1 - Mr. Rosen
1 - Mr. Sullivan

REC-60

SEP 6 1967

EX 106

(CONTINUED - OVER)

WGJ:bsm (9)

Memorandum to Mr. Conrad
Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

None of the shoeprints from the roof could be associated with the suspect's shoes. One shoeprint corresponds to a Goodrich gym shoe. Another fragmentary shoeprint appears to be of a wire screen design common to overshoes and rubbers.

The above information will be telephonically furnished to the Arlington County Police Department which will be confirmed by a Laboratory report.

ACTION:

For information.

[Handwritten signatures]

nm

REPORT
of the

1 - Office, Room 7133

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

To: Mr. Walter E. Bell
Inspector
Acting Chief of Police
Arlington County Police Department
Arlington, Virginia 22201

August 31, 1967

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL,
VICTIM;
MURDER

J. Edgar Hoover
John Edgar Hoover, Director

YOUR NO.
FBI FILE NO.
LAB. NO. PC-A1046 KH IZ CF
D-542582 2Q

Examination requested by: Addressee
Reference: Letter 8/28/67
Examination requested: Firearms - Microscopic - Miscellaneous -
Spectrographic - Shoe Print
Specimens:

Personally delivered on 8/29/67, by Officer [REDACTED]

Q9 Trousers
Q10 Belt
Q11 - Q12 Pair of socks
Q13 Shirt
Q14 - Q15 Pair of shoes
Q16 - Q22 Seven pillboxes containing metal fragments
Q23 Bullet jacket
Q24 Cartridge case
Q25 - Q30 Six shoe-print lifts
Q31 Towel
K2 Two samples of tar from roof
K3 Sample of green paint
K4 Sample of white paint
K5 Sample of roofing material

MAILED 3
SEP 1 1967
COMM-FBI

EX-102

REC-19

19 SEP 1 1967

Enclosures (4)

Page 1

(continued on next page)

ENCLOSURE

ENCLOSURE ATTACHED

WGJ:kk (4)

59 SEP 1 1967

TELETYPE UNIT ☐

Result of examination:

This report confirms and supplements the telephonic report furnished to your department on August 30, 1967.

The bullet jacket, specimen Q23, was identified as having been fired from the 7.63mm Mauser Military Pistol, Serial Number 9811, which was previously submitted to the Laboratory in this case.

Specimen Q20 is the base portion of the lead core from a jacketed bullet. Specimens Q16 through Q19, Q21 and Q22 contain small fragments of lead. Specimens Q16 through Q22 could all have formerly been portions of the lead core from the bullet represented by the Q23 bullet jacket. However, there are not sufficient microscopic markings remaining on these specimens to determine their specific origin.

Specimen Q24 is a 9mm Parabellum cartridge case manufactured by the Spanish firm of Fabrica Nacional de Toledo. This specimen is different from the other two cartridge cases which were submitted in this case, and it could not have been fired in the Mauser automatic pistol recovered in this case.

The pair of shoes, specimens Q14 and Q15, possessed foreign deposits of tar which were similar in composition to the tar of specimens K2 and K5. It is pointed out, however, that small samples of tar lack individual identifying characteristics, and the tar on the shoes cannot be specifically associated with the sources represented by specimens K2 and K5 to the exclusion of many other possible sources of such a common material.

Small tarlike deposits were present on the left rear of the trousers, Q9; however, the deposits were too limited for adequate analysis.

No foreign paints were found on the items of clothing, specimens Q7 through Q15, which could be associated with K3 and K4.

None of the prints in the lifts, Q25 through Q30, were associated with the Q14 and Q15 shoes. Only one lift, Q25, was sufficiently clear to outline the design which corresponds to a gym shoe design made by GOODRICH and measures 11½" long. The fragmentary prints on Q26 through Q30 appear to be of a wire screen design common to overshoes and rubbers. Four Xerox copies showing the Goodrich design described above are attached for your information.

Specimen Q31 is a white terry cloth bath towel bearing a "CANNON" label. This is a common brand sold in many stores. No visible or invisible laundry marks were found on the Q31 towel.

The above-listed items of evidence will be retained in the Laboratory until called for by a representative of your department.

RECORDED
8/23/67
jfa

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

Mr. Walter E. Bell
Inspector
Acting Chief of Police
Examination requested by: Arlington County Police Dept.
Arlington, Va. 22201

Examination requested:

Result of Examination:

Firearms (G&A) - Micro. (Fibers) -
Misc. - Spectro. -
Shoe Print

SHOE PRINT
95-140315-8
File # 105-140315-8
Lab. # PC-A1046 KM IZ CF
D 542582 EQ
Let. 8/20/67

Date received: 8/23/67 per da

Examination by:

Per. del on 8/23/67 by Officer [REDACTED]

8/29/67

b7c

all items kept
Q14-Q15 retained
to [REDACTED]
8/31/67

Q14 & Q15 retained
10-3-67

Specimens submitted for examination

Q9 Trousers
Q10 Belt
Q11 - Q12 Pair of socks
Q13 Shirt
Q14 - Q15 Pair of shoes
Q16 - Q22 Seven pillboxes containing metal fragments
Q23 Bullet jacket
Q24 Cartridge case
Q25 - Q30 Six shoe-print lifts
Q31 Towel

K2 Two samples of tar from roof
K3 Sample of green paint
K4 Sample of white paint
K5 Sample of roofing material

PC 1046

Q16 Small fragment of bullet jacket - & small
fragment of lead -
some marks on fragment of jacket - but till if
refly - both too small to mark -
jacket $\frac{3}{4}$ gr (.75)
lead .375g

Q17 Small fragment of lead - .75 g
no marks - too small to mark -

Q18 Small fragment of lead - 1.00 gr - too small
to mark - one side flat & bright as though struck
glass

Q19 Small fragment of lead - .50 gr - too small
to mark - black scribble marks

Q20 base portion of lead core of jacket bullet -
21.5 gr - & one fragment of lead - $3\frac{1}{2}$ g

PCR 1046

Q20 (cont)

No marks of value to either, specific size.

Q20 w/ on each -

Q21 Fragment of lead - has white films & blue plastic
adhering - Q21 w/ on side - 8.375 gr
no marks.

Q22 2 small fragments of lead - 375 gr each w/
no marks - too small to make

Q23 Bullet jacket - is brass colored with
brized plated exterior - some characteristics
as the FN 7.63mm Mauser - is split open
& nose pieces rolled back - was solid nose
when rolled skirt - has blue & white material
adhering - no lead marks observed - Q23 w/ on
inside - 14 3/4 gr -

Contains 6 L & 6 g impressions Ident Q1 & K1

GR

L. 045

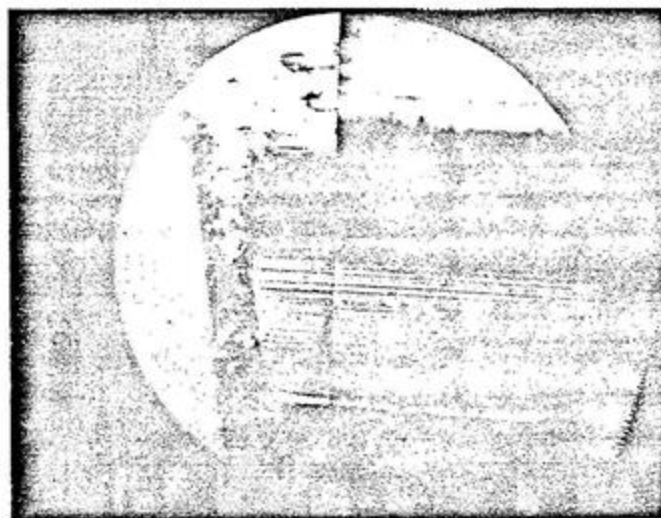
9.11

photo Q23-K1 32-11-2-
(26x)

PCA 1046

Q24 Cartridge Case FNT Gold plated
EF on head 1952 Q24 of inside mouth -
cross - with bridge cross primer - Fired -
is Am Perchellum manufactured by FABRICA
NACIONAL DE TOLEDO (Spanish)
not same as Q2 & Q3 Cartridge Cases & could
not be fired in K1 Auto pistol

PC A 1046



Q23

K1

RECORDED
8/23/67
jfk

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

SHOE PRINT

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # 705-1-10-1-5
Lab. # PC-A1046 KH IZ CF

Mr. Walter E. Bell
Inspector
Acting Chief of Police
Examination requested by: Arlington County Police Dept.
Arlington, Va. 22201

Let. 8/28/67

Examination requested:

Date received: 8/23/67 per del

Result of Examination:

Firearms (G&A) - Micro. (Fibers) -
Misc. - Spectro. -
Shoe Print

Examination by:

from + 3 KH
8/29

b7c [redacted]

Per. del. on 8/29/67 by Officer [redacted]

Decl. specimen Q31 is a white terrycloth
bath towel bearing a "CANNON" label. This is a
common brand sold in many stores. No
visible or invisible laundry marks were found on
Specimens submitted for examination the Q31 towel.

- Q9 Trousers
- Q10 Belt
- Q11 - Q12 Pair of socks
- Q13 Shirt
- Q14 - Q15 Pair of shoes
- Q16 - Q22 Seven pillboxes containing metal fragments
- Q23 Bullet jacket
- Q24 Cartridge case
- Q25 - Q30 Six shoe-print lifts
- Q31 Towel
- K2 Two samples of tar from roof
- K3 Sample of green paint
- K4 Sample of white paint
- K5 Sample of roofing material

Lab. file
8/31/67
[redacted]

PC-A1046

Q31 Towel white terrycloth bath
towel. Soiled but has new appearance.
No visible or invisible laundry marks

CANNON
CAVALIER
ALL COTTON
MADE IN U.S.A. RN 13713

Label attached to Q31

K2 Two samples of Tar. One is small & on the end of small stick. One is rather large & clean. Clean sample run by J. G. & found to be n to deposit on left shore.

K5 Similar to K2.

RECORDED
8/23/67
jfk

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

SHOE PRINT

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # 44-7057-513
Lab. # PC-A1046 KH IZ CF

Mr. Walter E. Bell
Inspector
Acting Chief of Police
Examination requested by: Arlington County Police Dept.
Arlington, Va. 22201

Let. 8/28/67

Examination requested:

Date received: 8/29/67 per del

Result of Examination:

Firearms (G&A) - Micro. (Fibers) -
Misc. - Spectro. - Examination by: [REDACTED]
Shoe Print

Per. del. on 8/29/67 by Officer [REDACTED]

67C

Specimens submitted for examination

Q9 Trousers
Q10 Belt
Q11 - Q12 Pair of socks
Q13 Shirt
Q14 - Q15 Pair of shoes
Q16 - Q22 Seven pillboxes containing metal fragments
Q23 Bullet jacket
Q24 Cartridge case
Q25 - Q30 Six shoe-print lifts
Q31 Towel

K2 Two samples of tar from roof
K3 Sample of green paint
K4 Sample of white paint
K5 Sample of roofing material

Lab. 10/1
8/31/67
WGT:KK

K3 Thick, dull, single-layered dark green paint chips
K4 Thin white paint scuffs, dustlike, with trace
of gray primer or some.

OVER

PC-A 1046 CF

Q10. No paint or Tar. (Beit)

Q11-Q12 " " " " (Socks)

Q13 " " " " (Shirt)

Q14-Q15. No paints. - (Shoes)

Small amt. of dirty asphalt or Tar on right shoe.

Large amount of dirty asphalt or Tar on sole of left shoe. - Left.

I.R. curve of cleaned sample run & found to be similar to K2.

99. Left rear of trousers possesses thin tar or asphalt deposits & small deposit of white & light bright green paint. Paints have been deposited while wet or soft & different from K3 & K4.

Tar or asphalt too limited for adequate analysis.

Debris scraped from Q1 did not contain any paint chips.

Raincoat - No significant foreign paint deposits
Cap

The pair of shoes, specimens Q14 + Q15, possessed foreign deposits of tar which were similar in composition to the tar of specimens K2 + K5. It is pointed out, however, that small samples of tar lack individual identifying characteristics and the tar on the shoes cannot be specifically associated with the sources represented by specimen K2 + K5 to the exclusion of many other possible sources of such a common material.

Small tarlike deposits were present on the left rear of the Trousers, Q9, however, the deposits were too limited for adequate analyses.

No foreign paints were found on the items of clothing, specimens ~~Q8~~ Q7 through Q15 which could be associated with K3 and K4.

RECORDED
8/29/67
jfk

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

SHOE PRINT

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # 105-14210-8
Lab. # PC-A1046 KH 12 CF

Mr. Walter E. Bell
Inspector

Let. 8/28/67

Examination requested by: Acting Chief of Police
Arlington County Police Dept.
Arlington, Va. 22201

542582

Examination requested:

Date received: 8/29/67 per del

Result of Examination:

Firearms (G&A) - Micro. (Fibers) -
kisc. - Spectro. - Examination by:
Shoe Print

Per. del on 8/29/67 by Officer [REDACTED]

FACT

None of the prints in the letter, Q25 through Q30, were associated with the Q14 and Q15 shoes. Only one print, Q25, was sufficiently clear to outline the design which corresponded to a gym shoe design made by GOODRICH and measured 11 1/2 inches long. Specimens submitted for examination

- Q9 Trousers
- Q10 Belt
- Q11 - Q12 Pair of socks
- Q13 Shirt
- Q14 - Q15 Pair of shoes (worn)
- Q16 - Q22 Seven pillboxes containing metal fragments
- Q23 Bullet jacket
- Q24 Cartridge case
- Q25 - Q30 Six shoe-print lifts
- Q31 Towel

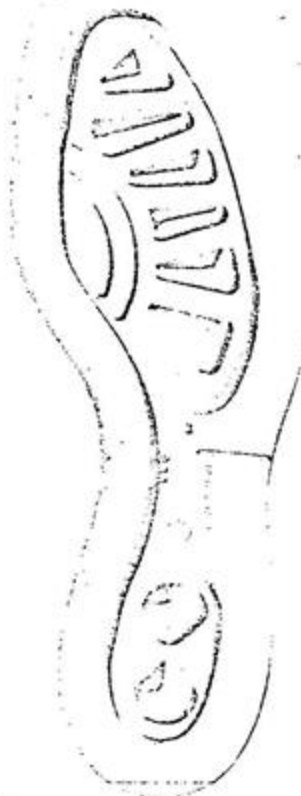
- K2 Two samples of tar from roof
- K3 Sample of green paint
- K4 Sample of white paint
- K5 Sample of roofing material

The fragmentary prints on Q26 through Q30 appear to be of a wire screen design common to overalls & rubber's. Several copies showing the Goodrich design described above are attached for your information.

Rec'd 8/29/67
from SA [REDACTED]
RTE 8/30

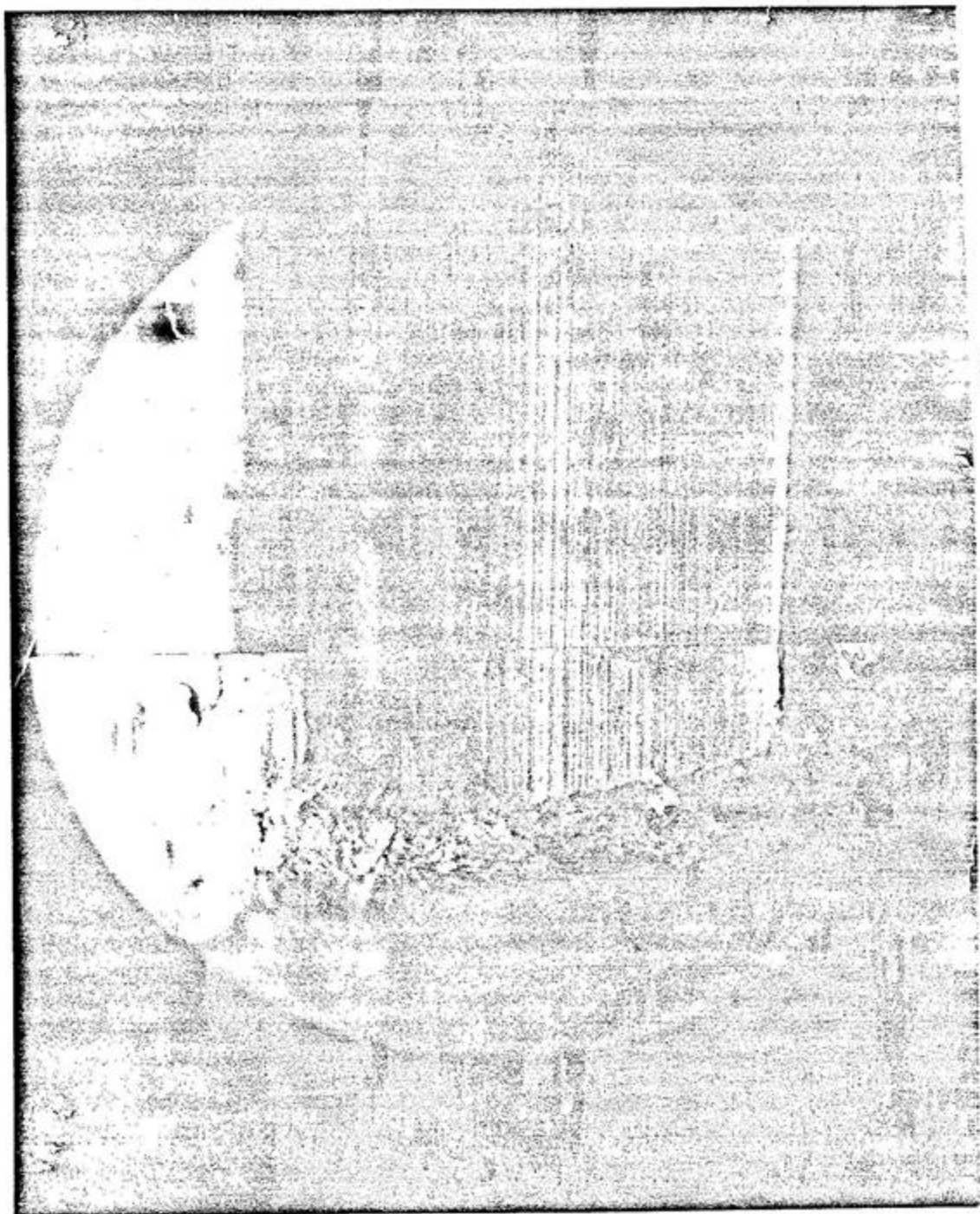
Lab. Exp.
8/31/67

Goodrich



11 1/2" long
Q35-
Q30 design

Q33



K1

012



WILLIAM G. FARVER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRG. IA
POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201



RAYMOND S. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. BELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

August 31, 1967

Rec. Del. 8/31/67
Officer [redacted] 67C

K6-K22

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

Reference: Rockwell, George Lincoln - Murder

Dear Mr. Hoover:

We are submitting a number of samples of material from the roof of the building from which shots were fired at George Lincoln Rockwell and also from several areas surrounding the building.

It is requested these be compared with the material found on the shoes of John Patler. Material presented has not been subjected to any previous expert examination.

Your cooperation in this matter will be greatly appreciated.

Yours truly,

Walter E. Bell
Walter E. Bell, Inspector
Acting Chief of Police

WEB/de

8-31-67
Copy & spec. retained in Lab
for Lab action & report

REC 16

95-140215-9
105-70374-5134

SEP 1 1967

SEVEN

126
105-70374-5134
KS has civ

FEDERAL BUREAU OF INVESTIGATION

Washington, D. C. 20537



REPORT

of the

IDENTIFICATION DIVISION

LATENT FINGERPRINT SECTION

August 31, 1967

YOUR FILE NO.
FBI FILE NO.
LATENT CASE NO. 82778

TO: Mr. Walter E. Bell
Inspector
Acting Chief of Police
Arlington County Police Department
Arlington, Virginia 22201

RE: UNKNOWN SUBJECT;
GEORGE LINCOLN ROCKWELL - VICTIM;
MURDER

REFERENCE: Letter August 26, 1967, and personal delivery
of evidence to Laboratory by [redacted]
on August 26, 1967
EXAMINATION REQUESTED BY: Addressee
SPECIMENS: 7.63mm Mauser Military pistol, serial
#9811, with five cartridges, K1

No latent impressions of value appeared or
were developed on the pistol and cartridges.

The result of our laboratory examination and
disposition of all the specimens are being made the
subjects of a separate report.

This report supplements the information
furnished your office on August 26, 1967.

MAILED 2

AUG 31 1967

COMM-FBI

Tolson _____
DeLoach _____
Mohr _____
Wick _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

(3)

THIS REPORT IS FURNISHED FOR OFFICIAL USE ONLY

John Edgar Hoover, Director

EX 106

16 SEP 7 1967

C. J. Peterson
5-2-67
076

05-140215-16
REC 5
105-70374-514

J. Edgar Hoover
John Edgar Hoover, Director

7-2
RECORDED
8/26/67

Jfk Recorded 8/29/67/9:30 am Received 8/29/67/ND
Laboratory Work Sheet

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

LATENTS

Re: UNKNOWN SUBJECT; ELOT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # 105-11541-10
Lab. # PC-A1021 KH IX
Lc. #82778

Mr. Walter E. Bell

Let. 8/26/67

Inspector

Acting Chief of Police

EXPEDITE

Examination requested by:

Arlington County Police Dept.
Arlington, Va. 22201

Examination requested:

Date received: 8/26/67 per de

Result of Examination:

Firearms (G&A) - Micro. (Fibers) -
Fingerprint Examination by: [REDACTED]

Per. del. on 8/26/67, by [REDACTED] 67C

Specimens submitted for examination

Q7 Coat
Q8 Cap

K1 7.63mm Mauser Military pistol, Serial Number 9811, with five
cartridges

See attached sheet for result.
7 latent exam
All items to be returned by [REDACTED]

Examination completed

8/26
Date

630 PM
Time

Dictated

8/26
Date

and 8/31/67
[REDACTED]

[REDACTED] 1-10

PC #71021 KH
LC# 82778

K1 ~~7.63~~ 7.63 Mauser Military
Automatic Pistol
w/3 cartridges SN 9811

Ref. Captain Carter, Suspect
Murder 8/25/67

37C

Ref. Lab. [REDACTED]
[REDACTED]
(Ref. To P.C., Lab) 8/26/67

Ref. Lab. - [REDACTED]
[REDACTED] (gun wet)
Gun disassembled & examined.
Cartridges examined separately.
Haven G. Johnson will examine [REDACTED]
latent exam. (He will handle)
Examined in lab 6:30 PM 8/26

LC# 82778

Call N. G. H. Daniel re results
6:40 PM 8/26/67 Johnson will examine
LFP + ID in [REDACTED] (Do Not Detach)

REPORT
of the



1-Office, 7133

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

To: Mr. Walter E. Bell
Acting Chief of Police
Arlington County Police Department
Arlington, Virginia 22201

September 1, 1967

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL,
VICTIM; MURDER

J. Edgar Hoover
John Edgar Hoover, Director

YOUR NO.
FBI FILE NO. 105-70374
LAB. NO. PC-A1103 KS

Examination requested by: Addressee

Reference: Letter 8-31-67; evidence personally delivered by
Officer [redacted] on 8-31-67
Examination requested: Microscopic

Specimens:

- K6 - K8 Material from roof (#1, #2, #3)
- K9 Soil from over catch basin (#4)
- K10 Soil from sidewalk (#5)
- K11 Soil from gate (#6)
- K12 Soil from beside bush (#7) ST-125
- K13 Soil from roadway (#8)
- K14 - K15 Soil from creek bed (#9, #10) REC 18 95-140215-11
- K16 Soil from railroad bed (#11) 105-70374-512
- K17 - K18 Soil from creek bank (#12, #13)
- K19 Soil from under bridge where gun was found (#14)
- K20 Soil from over bridge where gun was found (#15)
- K21 Soil from merry-go-round near bridge (#16)
- K22 Soil from park near bridge (#17)

Results of examination:

Small deposits of light brownish-gray sandy silt were found on the sole of the previously submitted Q14 shoe. Those deposits were different from the K9

54 SEP 11 1967

MAIL ROOM ☐ TELETYPE UNIT ☐

(continued on next page)

through K22 soils in composition and did not come from the sources represented by K9 through K22. No soil of value for significant comparisons was found on the Q15 shoe.

Nothing which could be associated with the slag and chert pebbles composing K6 through K8 was found on the shoes.

The evidence will be retained in the Laboratory until called for by a representative of your department.

RECORDED
8-31-67
10.

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File # 105-70374-
Lab. # PC-A1103 KS

EXPEDITE

Mr. Walter E. Bell
Acting Chief of Police
Arlington County Police Department (Let 8-31)
Arlington, Virginia 22201

Examination requested by:

Examination requested: Micro(PorG)

Date received: 8-31

Result of Examination:

Examination by:

Per del by Officer [redacted] on 8-31

Out! Small deposits of light brownish-gray sandy silt were found on the side of the previously submitted Q14 shoe. These deposits were different from the K9-K22 soils in composition and did not come from the sources represented by K9-K22. No soil of value for significant comparisons was found on the Q15 shoe.

Specimens submitted for examination

- K6-K8 Material from roof (#1, #2, #3)
- K9 Soil from over catch basin (#4)
- K10 Soil from sidewalk (#5)
- K11 Soil from gate (#6)
- K12 Soil from beside bush (#7)
- K13 Soil from roadway (#8)
- K14-K15 Soil from creek bed (#9, #10)
- K16 Soil from railroad bed (#11)
- K17-K18 Soil from creek bank (#12, #13)
- K19 Soil from under bridge where gun was found (#14)
- K20 Soil from over bridge where gun was found (#15)
- K21 Soil from merry-go-round near bridge (#16)
- K22 Soil from park near bridge (#17)

nothing which could be associated with the slag and chert pellets. K6-K8 was found on the shoe.

*Rec. [redacted]
Pot to
Wagon
10/3*

*1/16/68
9-1-67
TCH: [redacted]*

PC-A 1103 8/31

K17 Purple sh - red silty sh, 10R 5/4 ↑
very micaceous
→ 6/4

K18 10YR 6/3 pale brownish yellow silty
sh. with approx. 1% silt, iron staining and carbonaceous (fz.) very
micaceous

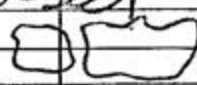
K19. argill. coarse sand silty. chert
etc. in lower silty sh. No silt,
glassy.

K20 IRF - clay pellets etc., red
and pellets no silt.

K21 10YR 6/4 ↓ St. yellow brown silty sh
with sand, very micaceous
rounded carbonaceous fz.
+ 8'

K22 7.5YR 6/4 St. brown, micaceous
silty sand,
also a more gray silty.

Q14-Q15 - "Canvas" shales. Both shales have
thin deposits of calc. in upper part.
Thin and resistant silty. No clay
in the only mass of sand silty shale
below soil deposits in silty sh
and clayey shale. No iron and
silt staining. = on upper (NW)
of the color. Right side is
2. sandstone in upper part. All sand
on color on soil
c. 2. in silty sh - silty silt. 10YR 6/4
silty silt. - mic. dark min.

		PC-A1103	8/31/67
K6-	blast furnace slag, vesicular, slightly eff. large pebbles 		
K7 -	Blast furnace slag, vesicular, similar to K6		
K8 -	Thin & angular chert pebbles - qtz pebbles, unrecrystallized as pebbles, trace thin rutiles etc. 		
K9 -	granitic TRF, qtz sd, etc. non-crystalline, as trace of sd		
*K10 -	10YR 6/2 brownish gray, altered sd, rather large amount of rutile, calcite and hematite qtz.		
*K11 -	10YR 6/2 brownish gray, altered sd, rather large amount of magnetite, calcite, rutile, qtz, much.		
*K12 -	10YR 5/2 grayish brown, altered sd, much trace of sd, some rutile material, some hematite, some pebbles.		
K13 -	Pebbles, TRF, gray coarse grained, some white and thin chert.		
K14 -	Coarse sd and pebbles - qtz chert, schistose rock fragments.		
K15 -	Coarse sd and pebbles, vesicular, sd, altered, much qtz.		
K16 -	greenish pebbles and fine sand, rutiles, dark green.		

(3)

	9/1	PC-1102	
asphalt piers	K10, K11, K12	on the site	
in K12 area			
K10 diff. shows here	green mss. - more		
many			
K11-	ditto	K10	
K12-	ditto		
K12-	more magn. lts.		
	translating on 4th diff.		
	50		

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad
FROM : R. H. Jevons
SUBJECT: John Patler, Suspect;
George Lincoln Rockwell, Victim
Murder

DATE: August 26, 1967

Mr. Tolson ☒
Mr. DeLoach ☒
Mr. Mohr ☒
Mr. Bishop ☒
Mr. Casper ☒
Mr. Callahan ☒
Mr. Conrad ☒
Mr. Felt ☒
Mr. Gale ☒
Mr. Rosen ☒
Mr. Sullivan ☒
Mr. Tavel ☒
Mr. Trotter ☒
Tele. Room ☒
Holmes ☒
Gandy ☒

Reference is made to my memorandum dated 8/25/67 advising that the Arlington County Police Department was delivering evidence recovered in this case to the Laboratory for examination.

At approximately 5:20 PM, 8/25/67, Officer [REDACTED] of the Arlington County Police Department delivered the following items of evidence to the Laboratory:

Portions of a bullet jacket
Two cartridge cases
Three pieces of lead from Rockwell's body

[REDACTED] stated that additional evidence would be delivered to the Laboratory on 8/28/67.

The items of evidence delivered 8/25/67 were examined with the following results:

The two cartridge cases are caliber*7.63 Mauser manufactured in Belgium. Both were identified as having been fired in the same weapon. The portion of bullet jacket is of the type loaded into cartridge cases like those submitted. The microscopic markings remaining on the bullet jacket and the cartridge cases are suitable for comparison with suspect weapons

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Conrad

* Equivalent of 30 caliber

SEP 20 1967

CONTINUED - OVER

EGJ:pb (9)

REC-23

3 AUG 31 1967

Memorandum to Mr. Conrad
Re: John Patler, Suspect

which may be recovered. Rifling impressions like those on the bullet jacket are produced by the 7.63 Mouser automatic pistol, the Star, and Sauer and Sohn automatic pistols chambered for the 7.63 Mauser cartridge, by a number of submachine guns of Swiss, German and Spanish manufacture and possibly other weapons. One of the pieces of lead is the major portion of the core of a jacketed bullet. The other two pieces of lead are too small to determine their source.

At approximately 7:55 PM, 8/25/67, Mr. Bowers of the Crime Records Division was advised of the above results.

At approximately 8:05 PM, [REDACTED] of the Arlington County Police Department was advised of these results.

You will be kept advised of any additional Laboratory participation in this case.

ACTION: None. For information only.

b7c

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

FROM : R. H. Jevons

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

1 - Mr. Conrad
1 - Office, Room 7133
DATE: 8/29/67

1 - Mr. Williams

Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

In connection with the continued investigation of the Rockwell shooting, the Arlington Police Department submitted additional evidence for examination this morning. This evidence consists of the clothing of the suspect, some additional bullet fragments recovered from Rockwell's automobile, a cartridge case found in the home of the suspect, samples of paint and tar and a footprint obtained from the roof of the shopping center from which the shots were fired at Rockwell.

These items are presently under expedite examination and you will be furnished the results as soon as they are available.

ACTION:

95-140215 For information.

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan

MEW:bsm
(9)

REC-23

AUG 31 1967

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

1 - Mr. Conrad
1 - Office, Room 7133

DATE: 8-28-67

FROM : R. H. Jevons

1 - Mr. Walker, Rm. 6130 IB
1 - Mr. Johnson, Room 7410

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

My memorandum of August 26, 1967, advised you that the Arlington County Police Department had delivered a bullet jacket, two cartridge cases and three pieces of lead from Rockwell's body to the Laboratory for examination.

During the late afternoon of August 26, 1967, the Arlington County Police Department delivered the following additional items of evidence for Laboratory examination:

7.63mm Mauser Military Pistol,
Serial Number 9811, loaded with
5 cartridges

Reversible raincoat

Gray cap

The above items have been examined with the following results:

The two cartridge cases and the bullet jacket recovered at the scene of the Rockwell shooting were identified as having been fired by the above-listed Mauser pistol.

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Trotter

WGJ:kk (11)

I read all of this in this morning's paper. I got this memo at 1:42 P.M. Aug 28 - ancient news.
REC 51 15-14010-14
(CONTINUED - OVER) 8 SEP 22 1967

COPY MADE FOR MR. TOLSON

Memorandum to Mr. Conrad
RE: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

The automatic pistol was examined for latent fingerprints with negative results.

The cap appears new while the coat is well worn. A portion of a pair of panty-hose was found in a pocket of the coat. One leg was knotted possibly for use as a mask. Nothing was noted to indicate the previous ownership of the coat, cap or portion of a pair of panty-hose. No hairs were found on or in these items. No visible or invisible laundry marks were found.

Mr. Bowers of the Crime Records Division was advised of the firearms and latent fingerprint examinations at about 10:00 P.M., 8/26/67.

Inspector Walter E. Bell, Acting Chief of Police, Arlington County Police Department, was telephonically advised of the firearms and latent fingerprint examinations at approximately 10:10 P.M., 8/26/67.

You will be advised of any further Laboratory participation in this case.

ACTION: None, for information.

ppm *JWS* ✓ *BGM* *12/2*

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad *JWC* 1 - Mr. Conrad
1 - Office, Room 7135
DATE: 9-21-67

FROM : R. H. Jevons *RHJ* 1 - Mr. Johnson, Room 7410

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER *5- The [unclear] C.B. [unclear]*

Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

In connection with the continuing investigation of the Rockwell shooting, the Arlington County, Virginia, Police Department has submitted additional evidence for examination. This evidence consists of three cartridge cases and four bullets which were recovered at a farm owned by Sam Ervin, Patler's father-in-law, located at McDowell, Virginia. The officers delivering this evidence advised that witnesses have stated that Patler had been firing a gun in that area approximately one month prior to the Rockwell shooting.

Laboratory examinations reveal that the four bullets and three cartridge cases submitted were all fired by the 7.63mm Mauser Military Pistol, Serial Number 9311, which had previously been identified as firing the bullets and cartridge cases recovered at the scene of the Rockwell shooting. *L*

The above information will be telephonically furnished to the Arlington County, Virginia, Police Department, and the information will be confirmed by a Laboratory report.

ACTION: For information.

95-140215

1 - Bufile 105-70374

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan

ADDENDUM: IWC:dmg 9/21/67

The above identifications are of importance in this case because, although the fatal weapon was found discarded some distance away from the crime, it has not heretofore been possible to connect the gun with suspect Patler. *WST*

WJ:kk (10)

70 SEP 23 1967

RECORDED COPY FILED IN 105-70374

REPORT
of the

1 - Rm. 7133

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

September 22, 1967

To: Major William G. Fawver
Chief of Police
Arlington County Police Department
Arlington, Virginia 22201

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation of a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Re:

JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

YOUR NO. 82778
FBI FILE NO. 95-140215
LAB. NO. PC-A1454 KH

John Edgar Hoover, Director

Examination requested by: Addressee

Reference: Evidence personally delivered on 9/19/67, by Officer [redacted]
[redacted], under cover of letter dated 9/18/67

Examination requested: Firearms

Specimens:

Q33-Q35 Three cartridge cases from pasture
Q36-Q39 Four bullets from tree

Results of examination:

This report confirms and supplements the telephonic report furnished your department on 9/21/67.

The three cartridge cases and the four bullets, Q33 through Q39, were all identified as having been fired by the 7.63 mm Mauser Military Pistol, Serial Number 9811, recovered in connection with this case.

MAILED 30
SEP 22 1967

Page 1

F WJ:lt (4)

SI 101

(continued on next page)

1 - 105-70374

"ENCLOSURE ATTACHED"

SEP 22 1967

MAIL ROOM ☐ TELETYPE UNIT ☐

RECORDED COPY FILED IN

RECORDED
9-19-67
10.

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

File #
Lab. #

95-140215-1/2

EXPEDITE

Major William G. Fawver
Chief of Police
Arlington County Police Department (82778) Let 9-18
Arlington, Virginia 22201

Examination requested by:

Examination requested: Firearms(G&A)

Date received: 9-19-67
per del

Result of Examination:

Examination by:

Per del by Officer [redacted] on 9-19

67C

9/20-21/67
Returned to
[redacted]
10-3-67

Specimens submitted for examination

Q33-Q35 Three cartridge cases from pasture
Q36-Q39 Four bullets from tree

Q33 763mm (.30 Remum) Cart Case - no headstamp marks
recognizable - oxidized - case filled with soil -
3 impressions near mouth from "strikes" of bullets
(has same appearance as FN)
JEP & QLB near mouth - Q33 up on side of case -
Has brass primer with circular FP marks - many
brass marks around head - some marks in FP dip

PCA1454

Q33 (C.F.)

Ident Q34, Q35 K1 PC

Q34

like Q33 except has FN* headstamp - brass firing
with circular FP impression - marked CLB SEC
near mouth - Q34cy on side

Ident Q33 - Q35

Q35 like Q34

marked CLB SEC near mouth Q35cy on side

Q33-35 all fired same weapon - light tests
from 7.63mm Mosin auto pistol SW 9811 (K1 m.
PC A1021KH) BF, FP, EXT RESIDUE

Photo Q35-K1 72m F11 3 1/2 m (9X)

PCB 1457

Q36

7.63m bullet - appears to be FN - fluted base
(Chrome ?) - has two cuts from base toward
nose - "B" on nose - SEC on base - Q36 cy
on side of nose -

6R L. mp .045
B. mp .11

Q37-Q39

Q37

like Q36
has had two pieces recently removed with sharp
cutting tool -
SEC on base B on nose - Q37 cy on side of
nose

6R L. mp .045
B. mp .11

Q36, Q38, Q39

PCA 1454

Q38

like Q36 & Q37

has two impressions of cutting instrument on side
of nose "BY" on nose - "SIC" on base - Q38y
on side of nose

GR L. imp. .045
S. imp. .11

Ident Q36-Q37

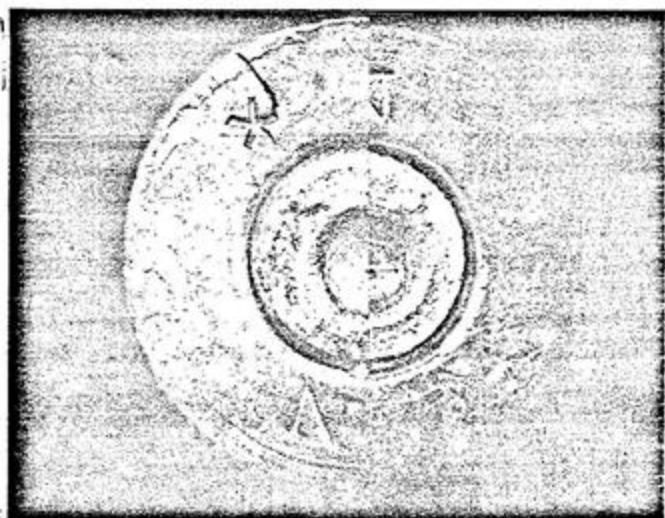
Q39 like Q36-Q37

Base has # of cut nails - "B" on nose -
"SIC" on base - Q39y on side of nose

GR L. imp. .045
S. imp. .11

Ident Q36-Q38

PC A 1454



Q35

K1



WILLIAM G. FAWVER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRGINIA
POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201



RAYMOND S. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. BELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

September 18, 1967

*Rec'd Mr. Tarnish
Off. J. E. Warner
50-KH*

J. Edgar Hoover, Director
Federal Bureau of Investigation
Department of Justice
Washington, D. C.

Re: George Lincoln Rockwell
Case #82778
Lab. #PCA1015
PCA1021

Attention: Laboratory

Dear Sir:

Relating to the case of the assassin of George Lincoln Rockwell the following items were taken from the Sam Ervin farm in McDowell, Virginia on 9/16/67. The following casings were found in the pasture.

- Exhibit #1: one bullet casing, no manufacture mark, initialed SEC & CLB.
- Exhibit #2: One bullet casing, marked FN * and initialed SEC & CLB.
- Exhibit #3: One bullet casing, marked FN * and initialed SEC & CLB.
- * Exhibit #4: Four bullets, initialed SEC on base and B on nose which were taken from a white oak tree.

It is respectfully requested that exhibits 1 thru 4 be run through a ballistics test to compare with the Mauser pistol #9811 submitted to your laboratory for testing and analysis.

These exhibits have not been examined by any other expert.

Your cooperation is appreciated.

Sincerely,

William G. Fawver
William G. Fawver, Major
Chief of Police

- * Exhibit #4: each marked a, b, c, d.

*Will Pick-up
- since*

UNITED STATES GOVERNMENT

Memorandum

- 1 - Mr. Conrad
- 1 - Office, Room 7133
- 1 - Mr. Herndon, Room 7330

TO : Mr. Conrad

DATE: 9-29-67

FROM : R. H. Jevons

- 1 - Mr. Johnson, Room 7410

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

On September 28, 1967, SA [REDACTED] testified at a preliminary hearing held for John Patler in County Court, Arlington, Virginia. Patler is charged with the August 25, 1967, murder of George Lincoln Rockwell, the former leader of the American Nazi Party.

[REDACTED] testified that two bullet jackets and two cartridge cases recovered at the scene of the shooting and the four bullets and three cartridge cases recovered from Patler's father-in-law's farm were all fired by the 7.63mm Mauser Military Pistol, Serial Number 9811, which was recovered from a stream near the scene of the shooting.

The preliminary hearing was not completed at the time SA [REDACTED] left Arlington, to return to Washington, D. C.

ACTION: None, for information.

95-140215

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Rosen
- 1 - Mr. Sullivan

REC 18

WGJ:kk (10)

13 OCT 10 1967

60 OCT 13 1967

✓
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Trotter
Tele. Room
Holmes
Gandy

C. D. Herndon

G. L. Mingo

B. B.

D. J.

67C

[Handwritten signature]

[Handwritten signature]

W. S.

75-140215-19

5-118

REPORT
of the

1 - Mr. Thompson

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

To: Major William C. Fawver
Chief of Police
Arlington County Police Department
Arlington, Virginia 22201

September 7, 1967

95-140215-20
REC-47 165 70374
EX-103

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

Re: George Lincoln Rockwell -
Victim;
Murder

J. Edgar Hoover
John Edgar Hoover, Director

YOUR NO.
FBI FILE NO.
LAB. NO. D-543080 EQ

Examination requested by: Addressee

Reference: Letter dated September 6, 1967

Examination requested: Document - Fingerprint

Specimens:

Q32 Slip of paper bearing typewriting

K23 - K30 Eight slips of paper containing typewriter samples

Results of examination:

It has been concluded that the typewriting appearing on Q32 was not prepared with any of the machines used in the preparation of K23 through K30.

The typewriting on Q32 closely resembles Underwood elite type spaced twelve letters to the inch, but there was not sufficient typewriting on Q32 to enable a positive determination as to the style of typewriter.

Page 1

(continued on next page)

MAILED 2
SEP 7 1967
COMM-FBI

SEP 12 1967
MAIL ROOM ☐ TELETYPE UNIT ☐

The Q32 paper measures approximately 2.9 inches by 5 inches and appears to be of a type commonly found on scratch pads. No watermarks or any other marks were found which would enable tracing this paper to its original source.

The submitted evidence will be returned to you separately with the latent fingerprint report.

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Laboratory Work Sheet

Re: *Geo. L. Rockwell*
Vic. MURDER

95-140215-20
File # ~~*105-76374-5*~~
Lab. # *D-543080*

Examination requested by: *Art. Co. PD*

Examination requested: *Personally delivered by [redacted]*
DOC - FPT

Date received: *9/6*

Result of Examination:

Examination by: *[redacted]*
(6/6)

Q32 NI K23-30

Q32 - prof. Underwood style (7-30)
LFPS

Specimens submitted for examination

Q32 Slip of paper bearing type writing.

K23-30 Eight slip of paper containing
type writer samples.

Q32 2.9" x 5"
no WM



Latent
9/17/61
Art. Co.

PHOTOGRAPHED

SEP 6 1961



WILLIAM G. FAWVER, MAJOR
CHIEF OF POLICE

ARLINGTON COUNTY, VIRGINIA

POLICE DEPARTMENT
1424 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201



RAYMOND S. COLE, INSPECTOR
ASSISTANT CHIEF OF POLICE
WALTER E. BELL, INSPECTOR
ASSISTANT CHIEF OF POLICE

September 6, 1967

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

2543080EG

Reference: Rockwell, George Lincoln - Murder

Dear Mr. Hoover:

[REDACTED] a prosecution witness in the murder of
George Lincoln Rockwell, received a threatening note which was
left in her mailbox.

I am submitting this note along with 8 samples of typewriting.
It is requested that the note be checked for fingerprints and if
prints are located elimination samples will be submitted. Please
make comparison of known samples with the typing on the note and
furnish any information possible concerning the paper upon which
the note was written.

This material has been submitted to no other expert exami-
nation.

Yours truly,

William G. Fawver
William G. Fawver, Major
Chief of Police

95-140215-20

EX-103

REC-47

105-76344

SEP 7 1967

PHOTOGRAPHED

SEP 6 1967

INDEX LAB FILES

ENCLOSURE
"ENCLOSURE ATTACHED"

Personal delivery

(6/7/67)
 30
 23
 Q 32
 "COPY AND SPECIMENS RETAINED IN LAB"

INDEX LAB FILES
 FBI-Arlington Lab.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

1 - Mr. Conrad
1 - Office, Room 7133
1 - [REDACTED]

DATE: 11-27-67

FROM : R. H. Jevons

1 - [REDACTED]
1 - [REDACTED]
1 - [REDACTED]
1 - [REDACTED]
1 - [REDACTED]

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

Tolson ☒
DeLoach ☒
Mohr ☒
Bishop ☒
Casper ☒
Callahan ☒
Conrad ☒
Felt ☒
Gale ☒
Rosen ☒
Sullivan ☒
Tavel ☒
Trotter ☒
Tele. Room ☒
Holmes ☒
Gandy ☒

During the afternoon of November 24, 1967, Mr. William J. Hassan, Commonwealth Attorney, Arlington, Virginia, telephonically advised that the trial of Patler for the murder of George Lincoln Rockwell was to begin on Monday, November 27, 1967. He stated that the following persons who had examined evidence in this case would be necessary witnesses even though some of them had negative findings:

b7c

[REDACTED]

Hassan stated that he anticipated using the testimony of these individuals on the afternoon of November 28, 1967, and on November 29, 1967. He was advised that SA [REDACTED] was committed to testify in Edwardsville, Illinois, on November 29, 1967. Hassan said that he would take [REDACTED] testimony out of order on November 28, 1967.

Hassan stated that he would telephonically contact SA [REDACTED] on the afternoon of November 27, 1967, after the jury selection to give a more accurate time for this testimony.

ACTION: For information. REC 51

95-140215

1 - Mr. Mohr
1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Gale
1 - Mr. Bishop

1 - 105-70374

FGJ:kk (15)

55 DEC 7 1967

4 DEC 1 1967

1 - 2 Joe [unclear]

105-70374
UNRECORDED COPY FILED IN

DIRECTOR, FBI (105-70374)
ATTEN: FBI LABORATORY

11/9/67

SAC, RICHMOND (157-93) -P-

NATIONAL SOCIALIST WHITE PEOPLE'S PARTY
(NSWPP)
RM (ORG)

There are enclosed a group of Xeroxed copies of letters written by JOHN PATLER, the accused slayer of GEORGE LINCOLN ROCKWELL.

PATLER is incarcerated in the Arlington County, Virginia Jail awaiting trial on November 29, 1967. The Acting Chief of Police, RAYMOND S. COLE, has requested the FBI Laboratory's assistance in analyzing the enclosed letters with the view of determining if PATLER may be using some type of code in the writing of his letters to his wife, particularly through the use of his underlining of key words or through the sketches which he often encloses:

The original of the letters are, of course, not available and only copies of his correspondence are these which are enclosed. Acting Chief of Police COLE has requested that the letters be returned to the Department by November 27 so that the Commonwealth's Attorney might have them available for the trial.

Enclosed are:

- (1) 36 letters from PATLER [redacted] dated 9/18/67 through 11/5/67;
- (2) 2 letters from PATLER to a [redacted] and to the Registrar of Arlington County, Virginia;
- (3) 1 letter enclosing a PATLER drawing from [redacted] dated 10/12/67.

2 - Bureau (Enc. 74) (Registered Mail)
2 - Richmond
[redacted]

95.14.1
NOT RECORDED
180 NOV-30 1967

ORIGINAL FILED IN 105-70374

b7C

b7C

RH 157-93

- (4) 34 letters from [REDACTED]
JOHN between the dates 9/15/67 and 11/4/67.

Upon completion of examination by the Laboratory, of the enclosed 74 letters, it is requested that the Alexandria, Va. Resident Agency be telephonically contacted for the case agent, [REDACTED] to obtain and return these to the Arlington Police Department by 11/27/67.

For the information of the Laboratory, Arlington County [REDACTED] is investigating this matter and the Bureau has requested that expeditious handling of leads in this matter be conducted as a matter of cooperation with that Department.

b7c

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

FROM : R. H. Jevons

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER

1-Mr. Conrad
1-Office, 7133

1-Mr. Herndon, Rm. 7330

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Holmes
Gandy

On December 7, 1967, Special Agents [redacted] testified at the trial of John Patler in Circuit Court, Arlington, Virginia. On December 8, 1967, Special Agent [redacted] testified at this trial.

Patler was being tried for the August 25, 1967, murder of George Lincoln Rockwell, the former leader of the American Nazi Party.

[redacted] testified that two bullet jackets and two cartridge cases recovered at the scene of the shooting and the four bullets and three cartridge cases recovered from a pasture on Patler's father-in-law's farm were all fired by the 7.63 mm Mauser Military Pistol, Serial Number 9811, which was recovered from a stream near the scene of the shooting.

[redacted] testified that tar on the shoes worn by Patler at the time of his arrest was similar to the tar on the roof of the building from which the murder bullets were allegedly fired. Tar was also found on Patler's trousers but this was too limited in amount for analysis. [redacted] testified that it would be impossible to state with certainty that the tar sample from the shoes was the same as the tar from the roof. He also testified that no paints on Patler's clothing could be associated with the paints present on the rooftop.

[redacted] testified that his examination of Patler's shoes failed to reveal the presence of roofing gravel like that from the rooftop or soils like those found around the building from which the murder bullets were fired.

62 DEC 37 1967

REC-52

45-140215-22

- 1 - Mr. Mohr
- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Gale 1-105-70374
- 1 - Mr. Bishop WGJ:nlb (16)

(CONTINUED - OVER)

UNRECORDED COPY FILED IN 105-70374

Memorandum to Mr. Conrad
Re: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL, VICTIM;
MURDER
95-140215

[REDACTED] testified that shoe prints recovered from the rooftop could not have been made by the shoes worn by Patler at the time of his arrest.

[REDACTED] testified that on August 26, 1967, he received the 7.63 mm Mauser pistol, a reversible raincoat and a cap from the Arlington County Virginia Police Department and that he then turned these items over to [REDACTED] for examination. b7C

[REDACTED] testified that his examination of a reversible raincoat and a cap found near the scene of the shooting failed to reveal the presence of hairs or laundry marks. A portion of a pair of panty hose was found in the pocket of the raincoat when received in the Laboratory. This specimen did not contain hairs.

The trial of this case has not been completed.

ACTION: For information.

[Handwritten signature]

UNITED STATES GOVERNMENT

Memorandum

TO : MR. TROTTER *h.s.*

FROM : S. F. Latona *h*

SUBJECT: JOHN PATLER;
GEORGE LINCOLN ROCKWELL - VICTIM
MURDER

DATE: 12-8-67

Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

LATENT PRINT TESTIMONY

On 12-7-67, [REDACTED] appeared as a witness at the trial of captioned case being held in Arlington County Court, Arlington, Virginia.

[REDACTED] testified he examined the alleged murder weapon, a Mauser Military pistol, but did not develop any latent prints. Commonwealth's Attorney William J. Hassan is prosecuting this case, the defendant is represented by Attorneys Thomas Harrigan, Thomas Morris, and Mrs. Helen Lane, and the judge is Charles Russell.

This is the case involving the murder from ambush of American Nazi party leader George Lincoln Rockwell in Arlington, Virginia, on 8-25-67.

The trial is still in session and is expected to continue for several days.

RECOMMENDATION:

For information *Q*

95-140215

1 - Mr. Bishop

JW:bb/tbg
(4)

95-140215-23

9 DEC 22 1967

5-J. Harrigan

35 JAN 2 1968

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Jevons

1-Mr. Conrad

1-Office, 7133

DATE: 12-12-67

FROM :

SUBJECT: JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL,
VICTIM; MURDER

There is attached hereto a copy of an article appearing in the December 8, 1967, issue of the Washington Daily News commenting about testimony at the trial of Patler. Mr. Tolson asked "What about this?"

On December 7, 1967, I testified for approximately two hours at the trial of Patler in Circuit Court, Arlington, Virginia. During the early portion of my testimony relating to the identification of and chain of custody of some 40 items of physical evidence, one male juror raised his hand and the judge permitted a question which was essentially "I think that on one occasion you mentioned 7.65 mm - did you mean 7.63 mm?" My answer was essentially "If I did state 7.65 mm, it should have been 7.63 mm." No other questions were posed by any other juror and no mention of this question was made during the extensive cross-examination.

The following observations on this article should be noted:

- 1 - During the early portion of the testimony I referred many times to a Mauser Military Pistol, 2 bullet jackets, 4 bullets and 5 cartridge cases all of which are 7.63 mm caliber. To the best of my recollection, I did not refer to any of these exhibits as 7.65 mm.

Enclosure

95-140215

1-105-70374

1-Mr. Mohr
1-Mr. Callahan

WGJ:nlb (7)

55 JAN 3 1968

(CONTINUED - OVER)

PERS. REC. UNIT

3 DEC 28 1967

SEVEN

UNRECORDED COPY FILED IN 95-140215-24

Memorandum to Mr. Jevons
Re: "JOHN PATLER, SUSPECT;
GEORGE LINCOLN ROCKWELL,
VICTIM MURDER"
95-140215

- 2 - The juror's question came early in the testimony and not as I was leaving the witness stand as reported.
- 3 - I did not acknowledge "sheepishly" that I had meant to say 7.63 mm. My answer was as set out above.
- 4 - The entire sequence of testimony as set out in this article is erroneous. This strongly suggests deliberate distortion or that the reporter was not even in the courtroom at the time this testimony was presented.

ACTION: For information.

ADDENDUM RHJ:nlb:

Obviously the news item was a distorted version of what actually happened in the courtroom. No other newspaper is known to have carried this version of the testimony that took place in this case. b7c

It is to be noted that William J. Hassan, Commonwealth Attorney, who handled the prosecution of this case was highly laudatory of the performance of [redacted] and others as witnesses. In view of the above, there appears to be no basis for any critical administrative action to be taken in this matter.

[Handwritten signature]
✓
I don't understand
the gratuitous dig
by Wash Daily News.
2 H J

Appendix 21

The White Party Report by “Max Amann”
June 1968

THE WHITE PARTY REPORT

EDITOR'S NOTE - The historic document known as the White Party Report was originally published in June of 1968 by William Surrey, former head of the American Nazi Party Publications Office under Commander Rockwell, who used the pseudonym "Max Amann". Although highly partisan and personal, it remains the only public commentary and analysis of the possible role of Matthias Koehl in Commander Rockwell's assassination. Since the publication of the report a quarter of a century has elapsed, and regardless of Koehl's guilt or innocence in the murder of George Lincoln Rockwell, it is now generally acknowledged within the Movement that Matt Koehl's tenure as head of the Party was an unmitigated disaster which effectively put an end to any hope that the White man will ever be able to recover the entire North American continent through a nationwide National Socialist movement. In this purely negative sense, Koehl may be called the father of modern-day White Separatism, thus making a contribution to the racial struggle after all.

TO: Admirers and Supporters of the late George Lincoln Rockwell

FROM: Max Amann, personal friend of George Lincoln Rockwell and former business manager of the American Nazi Party.

The ability to make a clear-cut decision is not a part of most men's make-up. The average man, faced with an unpleasant situation requiring decisive action, prefers to "ride the fence until forced in one direction or the other---and the tendency of the fence straddler is to lean in the direction of the status quo; that is, in the direction which requires the least thought and effort on his part. It is that very lack of decisiveness on the part of the masses of our people which has taken our race and nation to the brink of catastrophe, and it is that same lack of decisiveness on the part of many of the Commander's most ardent supporters which now threatens to destroy the Cause for which he gave his life.

George Lincoln Rockwell's American Nazi Party is dead! In its place is a German Nazi cult that would be violently repudiated by the Commander if he were here to speak. Evidence mounts daily to show us that immediate action is needed if our Cause is to be saved. But while the evidence mounts and our Cause grows dim, many continue to support the status quo; that is, the hollow remains of the American Nazi Party---because it's easier than embarking on a new course.

Matt Koehl's American Nazi Party and George Lincoln Rockwell's American Nazi Party are TWO DIFFERENT ORGANIZATIONS ENTIRELY! Only the name is the same.

The time has come to make a decision!

History proves beyond any doubt that chaos and defeat is the fate awaiting those who face an either/or situation with a "wait and see" attitude. Victory goes to the man who weighs the facts, makes a decision based on those facts, and ACTS! And we who are the admirers and followers of Lincoln Rockwell's dream are faced with just such an either/or situation. The facts must be weighed, a decision must be made, and we must act. The Cause is at the crossroads and further procrastination will bring us certain defeat.

The Situation

When the Commander was assassinated in August of 1967, there was a great effort

made by all of us to keep the Party unified. And for a time, it appeared that all would go smoothly.

But as weeks passed into months, and months into almost a year, it became obvious that we who had trusted Matt Koehl with the leadership of the Commander's party had made a terrible mistake. We had put the Party into the hands of a man who had been repeatedly rejected as leadership material by the Commander himself, and we were faced with the consequences. My recent decisions and actions have been an effort to rectify that mistake and put the Cause once again on a course that does not blaspheme everything for which the Commander lived and died. Lincoln Rockwell's dream deserves better than death at the hands of Matt Koehl.

Because Matt Koehl seized LEGAL control over the name, American Nazi Party, almost before the Commander was cold, we have no alternative but to push the Commander's dream forward under another Party name. But the Commander himself said, just a few weeks before he was assassinated, at a top level staff conference in June, that the time had come to change our "Nazi" image to one of a White People's movement. As one step in accomplishing that, he (the Commander) changed the name of the Party to the National Socialist White People's Party. So in reality, we are being forced to do what the Commander said should be done anyway. And we have chosen a name to which he would unquestionably give his wholehearted approval---THE WHITE PARTY.

Some feel that to abandon the American Nazi Party name is to abandon the Commander's memory. But it is quite the contrary. The Commander would have called his Party "The Purple People Eater's Party" if he had thought that was the way to victory. He, himself, changed the name of the Party before he died. We have merely simplified the name, and made it more appealing to the masses of the people. The principles, aims and purposes of THE WHITE PARTY are identical to those of the Commander.

ALL---I repeat---ALL of the Commander's closest friends and associates have withdrawn support from Matt Koehl's cult. The reasons will be outlined in this letter, and you are asked to decide, one way or the other, which course of action you shall follow. A divided force will destroy all the Commander worked and sacrificed to build. Weight the facts, make a decision---and ACT!

Matt Koehl: Illegitimate Heir

Matt Koehl demands subservience to his dictates under what he calls the "leadership principle", as though it had some bearing on this particular circumstance. He has used the "leadership principle" to convince young idealists, who tend to be guided more by emotion than by reason, that the current actions of those people whom the Commander trusted most constitute a mutiny. But mutiny is defined as "a rebellion against duly constituted authority", and Matt Koehl can hardly claim to be anything other than a recipient of a peculiar circumstance, for it is circumstance ALONE which catapulted him into the position of leadership in the Commander's Party.

As the LEGITIMATE successor to Lincoln Rockwell, Matt Koehl was *rejected* time after time after time. The position of Deputy Commander carried with it the Commander's stamp of approval for his successor. Karl Allen once held that position, and Alan Welch once held that position, but *Matt Koehl never held that position*, albeit there was no Deputy Commander of the ANP for more than a year prior to the Commander's death, and Koehl was next in line (in terms of rank) for that entire period.

If the Commander had felt that Matt Koehl had the qualifications and capabilities needed to lead the Party in the event of his death, it would have been a simple matter to

have made him Deputy Commander. But he didn't. Alan Welch was promoted OVER Matt Koehl when he assumed the duties of Deputy Commander, and the position was left unfilled when Welch resigned from active duty.

The Commander apparently knew from long association and experience what we were to learn only through trial and error; i.e. that Matt Koehl would destroy everything he had built if he ever gained control. We've learned----but undoing an error is not easy.

Matt Koehl's Obsession

Matt Koehl is now, and always has been, a cultist who worships the past at the expense of the future. He can quote extensively from almost every German manual, but is completely lost when the time comes to put those words into action. If given an ironclad guarantee tomorrow for worldwide WHITE POWER, with the one stipulation being that the name of Adolf Hitler never be mentioned again, Matt Koehl would reject the offer. In his obsession with *the idea* of National Socialism, he has lost sight of *the goal* of National Socialism, and you need only look at the last issue of the White Power newspaper to see the proof of that statement. The newspaper, contrary to everything the Commander said and emphasized at the June conference, smacks the American people in the face with GERMAN heroes, GERMAN history, and terms popular to GERMAN people. The newspaper epitomizes the cultist thinking of Matt Koehl, and blasphemes everything the Commander felt was necessary for our victory.

I, as much as any of you, would like to see the name of Adolf Hitler and other German heroes gain their rightful place in history. However, this is America, 1968---NOT Germany, 1933---and the White race is faced with a crisis such as the world has never seen. This is not the time nor the place for cramming German history and heroes down the throats of Americans. Certainly Rudolf Hess should be freed. But the American people today are a good deal more interested in freeing AMERICAN boys from Communist prisons, and we must appeal to THEIR primary interest if we are to gain their support. Worldwide White Power is dependent on AMERICAN support, and regardless of our personal feelings about Germans in particular, we must use propaganda techniques that have a strong appeal to White AMERICANS!

The June Conference

In June of 1967, two months before his death, the Commander called a top-level conference to announce changes in Party policy. In that three day meeting, he made clear that the time had come to change the Party's image from German Nazism to an American White People's movement. He proposed a newspaper for mass circulation and mass appeal, to be called "WHITE POWER"; the Swastika was to be played down, and all propaganda was to be aimed at *American* acceptance; the salutation "Heil Hitler" was to be replaced by "White Power", and the name of the Party was changed. All of his proposals were directed toward denazification of the American Nazi Party.

Karl Allen and several of his men (most of whom are mentioned all through *This Time the World*) were invited to the conference for the express purpose of uniting all National Socialists under one banner. The Commander, concerned over the fact that the position of Deputy Commander had gone unfilled for so long, and recognizing a very real possibility of his assassination, discussed with me prior to the meeting the possibility of getting Karl Allen to return to the Party as Deputy Commander. He discussed the same possibility with Karl Allen at the conference. The proposal was met with interest by Allen, and they both agreed to talk further about it at a later date.

Why Does Matt Koehl Lie?

The June conference was a very real success in the Commander's eyes---the newspaper he had dreamed of so long was launched; plans for a new headquarters were already under way with one third of the money already raised; and differences were resolved between him and Karl Allen, making Allen's return to the Party only a matter of time.

It is a well known fact that Matt Koehl despised Karl Allen. It must surely have infuriated him that the Commander was seriously planning once again to put Allen in the position of Deputy Commander, and thus eliminate his hope of attaining that position of potential power. The prospect of having a man he despised promoted over him, making the second time he had been rejected, must have been a bitter pill to swallow. And along with that, he was going to have to stop eulogizing German Nazism. With his obsession for everything German, Koehl undoubtedly saw his world crumbling beneath him.

In a recent NS Bulletin, Koehl had this to say about Karl Allen: "Next to Patler, the most dangerous traitor with whom the Commander had to deal was a sly, ingratiating person named Allen who, after being promoted to the position of National Secretary, (*Allen was in fact DEPUTY COMMANDER*), deliberately attempted to seize the leadership of the Party, and then failing that, to wreck the Party by organizing a mutiny."

Compare that statement with this one from Barbara, the Commander's secretary of many years: "The Commander was quite serious about getting Karl Allen and his group back with our Party....the national conference was held the first part of June, 1967. On June 27th someone tried to kill the Commander. This was *after* the Commander and Karl Allen had decided to work together. On Monday, August 28th, the Commander was to meet with Karl Allen again for very serious plans..."

What is Koehl's purpose in telling such lies about Karl Allen? Does he hope to keep Party members from meeting and talking with Allen to learn his true character for themselves? If so, he almost accomplished his purpose with me. Fortunately, I make it a practice to base my opinions only on first-hand knowledge. Karl Allen is the leader of the White Party with my full backing and support.

The Commander was killed on August 25th. If he had lived to have that meeting with Karl Allen on the 28th, Karl Allen would today be the head of the American Nazi Party---NOT Matt-Koehl.

Who Killed Lincoln Rockwell?

A jury said John Patler did it, but the evidence was entirely circumstantial. The Jews undoubtedly wanted the whole affair over and done with as soon as possible to insure that Commander Rockwell would not become a martyr in the people's eyes---so a thorough investigation was too much to hope for. John Patler was arrested, tried and convicted in probably the speediest trial in the last thirty years.

The dirt from John's clothes was tested to see if it matched that of the assassin's getaway path. It didn't. His tennis shoes had a different pattern on the soles than the prints found on the top of the tar roof. Hairs and other markings from the black jacket that was found failed to match anything that would tie it with Patler. The gun admittedly belonged to Robert Lloyd (one of Koehl's current crew), who said that he had loaned it to Patler, (he later said that Patler stole it), but *no evidence was ever produced to prove that Patler was in possession of the gun at the time of the shooting*, while considerable evidence is

available to prove that Patler did NOT have the gun for months prior to the shooting.

When the Commander was assassinated, there was no doubt in my mind that John Patler was the killer. And the fact that he was arrested within minutes after the shooting merely confirmed what I already believed to be true beyond any reasonable doubt. And I was far from alone in that conviction---almost everyone was convinced of Patler's guilt because of the circumstances surrounding his dismissal from the Party and because of his many volcanic eruptions in the past. But as facts began to emerge at the trial, i.e. facts which proved John's innocence rather than his guilt (facts which Matt Koehl never saw fit to make known to ANP members), many began to waver in their belief of his guilt.

At first the tendency was to believe that John "had something to do with the murder" even if he didn't pull the trigger. But finally, when evidence piled on evidence, and vital questions remained unanswered by those who had control of the Party as a result of the Commander's death, the people who were the Commander's closest associates and friends became as convinced of John's innocence as they had previously been convinced of his guilt. And the question of WHO, if not Patler, had killed the Commander was once again in everybody's mind.

The ONLY thing which was proven beyond any reasonable doubt at Patler's trial was that Patler and the Commander had violently disagreed several times before they had finally parted company. But that could be proven of many people who have been in and out of the Party ranks. We Nazis are highly emotional people, and violent disagreements are part of our nature---but being highly emotional does not make us murderers. It proves nothing when all is said and done.

The Commander's secretary, convinced of Patler's guilt in the beginning, is today as equally convinced of his innocence. Floyd Fleming, one of the Commander's oldest and closest friends, and the man who gave him the HQ on Randolph Street, is another who first believed John to be guilty and who now believes him to be innocent. Ray York, the man who put up the money for *This Time The World*, and who gave financial support to the Commander throughout the years, is still another. Karl Allen, the man who would have been Deputy Commander of the Party if the Commander had lived another few days, was among the first to notice the total lack of evidence against Patler, and among the first to rise to his defense. J. V. Morgan, an extremely close friend of the Commander, is of a like opinion. And on and on I could go with names of people whose loyalty to the Commander is above question. And to that list, I'd like to add my name, for I too have become convinced that John's explosive temper, and the circumstances surrounding his separation from the Party, were recognized by someone as factors needed for a perfect "frame". And his presence in the area at the time of the shooting just added to the good fortune of those who planned to use him as a perfect made-to-order patsy for their crime.

So shallow was the evidence against John Patler that even the judge later voiced amazement that the jury found him guilty. The jury said it was a "compromise verdict".

Guilty Or Not Guilty?

Patler lived in the vicinity of the area where he was arrested. He established via receipts and witnesses that he was in the area doing errands, and that at the time of the shooting he was so far from the point where the Commander was killed that he would have had to RUN all the way to arrive there in time to fire the fatal shot. And the point of just *how he would have known the Commander would be there at that particular moment* has never been established.

Witnesses said the killer was wearing a black jacket. The police covered every inch

of the area with a fine tooth comb, looking for the jacket, since John was wearing only a T-shirt when he was picked up, and they used mine sweepers and scuba divers to look for the jacket and the gun. Nothing was found. John was put in jail. The next day an "informer" (who was never identified) called the police and told them that they could find bullet casings from the murder weapon on the farm of Patler's father-in-law, and told them the EXACT tree out of about 5,000 where these items could be located. The black jacket was found stuffed behind a bush, and the gun was seen by someone in a stream which had already been thoroughly searched, with the barrel sticking up prominently between two rocks.

Can anyone honestly believe that the police are THAT inept?

Bullets could be fired into a tree by anyone, and no evidence whatever was presented to prove that John, and not someone else, shot those bullets into the tree. And it requires a stretch of the imagination that I don't have to believe that the police, with all of the investigative equipment at their command, could overlook a gun and a jacket that were both visible to the naked eye the next day.

Patler says that only two people knew the location of his father-in-law's farm, the Commander and Matt Koehl. He says that he gave the location in a sealed envelope to Koehl. Maybe John is lying, but then again, maybe someone else is lying.

The Scripps-Howard newspaper chain, convinced of Patler's innocence and looking for a big story, has paid \$6,000 for the trial transcript and assigned a full time reporter to the case. If someone besides John Patler did kill the Commander, they are undoubtedly getting nervous----and with good cause.

Strange Facts Emerge

Matt Koehl is either a compulsive liar, or he has something to hide. Having no investigative facilities at my command, I cannot say which. But he has told so many lies that they are now coming back around to meet him.

He lied about Karl Allen when he labeled him "the most dangerous traitor with whom Commander Rockwell had to deal". He lied when he said that Allen was National Secretary, when in fact he had been Deputy Commander. He lied and distorted the facts outrageously in the Frank Smith-Chris Vidnjevich affair, just as he lied about Frank Drager and me. In short, he lies with almost every breath he takes.

A case in point: Bill Kirstein, the young boy who was put in charge of the California unit when Ralph Forbes left, called Koehl to find out the reason behind so many of the Commander's supporters rejecting his leadership. Since Bill was in Dallas for a while, and knows the work I have done with the ANP Order Department, he asked Koehl specifically about me. Koehl lightly brushed off the loss of my support and said: "Dallas (meaning me) has made no significant contribution since Commander Rockwell's assassination." Bill wanted to be loyal to Koehl, but feeling that something was seriously wrong, wrote to me after the conversation with Koehl. I have since gotten many such letters.

The Commander was assassinated in August of 1967. Since that date, I personally have (1) raised \$7,500 from ANP supporters and contributed \$1,500 of my own money to publish the Commander's book, *White Power*; (2) arranged for and followed through the entire business of printing the book; editing, proof reading, advertising, mailing, etc., etc.; (3) contributed my home as an office and warehouse for the ANP Order Department; (4) spent approximately four hours every day in the business of filling orders, answering correspondence, ordering more material, etc. (until Koehl seized the Dallas post office box

and redirected all mail to Arlington); and (5) entertained Matt Koehl twice in my home while he had meetings with a group that was openly antagonistic to my wife and me---the group that was led by a half-literate man who was stripped of his rank and thrown completely out of the Stormtroop Section by Commander Rockwell himself.

Do YOU consider my actions since the Commander's death "no significant contribution" to the ANP?

Koehl's Lies and Strange Behavior

At one of the meetings in Dallas, i.e. the one which was held for no other reason than to vilify my name and undermine the work I had done, Matt Koehl was asked, "What were YOU doing on the day of the assassination?" (I had one lone friend in this group, otherwise I would never have known about this particular lie.) Koehl's answer to that was, "I did not leave HQ all day. The Commander took the car and went somewhere. When he returned, he said he was going to do his laundry, and I tried to get him not to because we needed the car for a distribution of the White Power newspaper that was planned for that afternoon."

According to recorded testimony at Patler's trial, Matt Koehl told a flat lie when he said he did not leave the HQ all day. WHY he lied is something only Matt Koehl can answer---and he seems disinclined to discuss it. An answer, however, might be MOST enlightening.

To again quote the Commander's secretary: "This is what happened on the morning of the assassination. The Commander, having no one dependable to clean the camper, decided to do it himself. It was not his clothes he took to the laundromat, but curtains, towels, etc. from the camper. He put them in the back of the car and was going down the hill to the laundromat when Matt Koehl asked him to wait until he had made an errand, which turned out to be a visit to the Niles' and a stop at the post office on the way back." For those of you who don't know, Peggy and Doug Niles left the Party under most disagreeable circumstances just a short time before the assassination. Doug Niles, who has a criminal background, has the distinction of being the only man ever to receive a DISHONORABLE discharge from the Party. Not even Patler was reduced to that.

The only truth in Koehl's statement to that group was that there was supposed to be a distribution of the newspaper that afternoon, and the car WAS needed. The Commander was undoubtedly hurrying (knowing him) to get to the laundromat and get back with the car. It was the first issue of the long awaited newspaper, and he was most anxious to see the people's reaction to it.

With the Commander on the way down the hill to the laundromat, Koehl stopped him and asked to run an errand first. The Commander agreed. Koehl got in the car, with the laundry still in the back, and drove to the home of Doug Niles. His reason? According to testimony, to deliver two theater tickets to the movie *Triumph of the Will*. When he arrived at Niles' house, Doug was at work and only Peggy, his wife, was home. Though Matt Koehl is not known for his love of small talk, particularly from women, he stayed so long drinking tea and chatting with Peggy Niles that he got a parking ticket---which is how we happen to know his movements on that fateful morning.

While he was there, he called Doug Niles at his office and talked to him. According to Niles' boss, Niles asked for some time off "to do an errand", which was given to him. When finally Koehl left the house of the man who had been dishonorably discharged from the Party, he went by the post office and then returned to HQ with the car and the laundry. The Commander, who had undoubtedly been pacing the floor during Koehl's

extended absence, immediately took the car to the laundromat where he was met by an assassin's bullet.

George Lincoln Rockwell was murdered about 11:30. Niles returned to work about 12:30. And Matt Koehl became top ranking officer in the American Nazi Party.

The Funeral

The strangeness of the events surrounding the Commander's assassination didn't end with his death.

At the funeral, with dozens of loyal Party officers in attendance, the man who assumed the LEAD POSITION in front of the hearse was none other than Doug Niles. When an officer asked who put Niles in charge, he was told, "Matt Koehl". It's a certainty that Koehl knew Niles was occupying that strategic position---he was sitting in the hearse and Niles was standing right in front of him.

It seems exceedingly strange that Matt Koehl, a man who is well-known for his strict disciplinarian manner, would choose a man who had been DISHONORABLY DISCHARGED from the Party to occupy the lead position at the Commander's funeral. And it seems particularly strange when you learn, as we did later, that Koehl visited the same man's home on the morning of the assassination for a purpose so insignificant as the delivery of two theatre tickets. Add to Koehl's strange actions the fact that Niles left his job after receiving a telephone call from Koehl, and did not return until an hour after the assassination, and one is forced to say that "strange" is hardly sufficient to describe the whole affair.

Since Koehl told the Dallas group that he "did not leave HQ all day" on the day of the assassination, it seems safe to say that our knowledge of his movements on that day would be limited to his less than trustworthy word if he hadn't gotten that parking ticket while visiting the Niles' home that morning.

An Interesting Piece Of Information

Shortly after the assassination, Patler's private investigator Bob Hunt found a tennis shoe under a bush in the back of Doug Niles' home which had tar on it. As the case is not in their jurisdiction, the FBI cannot test to see if the print matches the one taken from the roof at the shopping center. So Bob Hunt gave a photograph of the print to the Arlington Police Department for their investigation, but he has not yet received a report. Since Patler's tennis shoes did NOT match the prints on the tar roof, it would be interesting to know whether the shoe found behind Niles' house DID match, but only the Arlington police can tell us---and they don't seem too interested. Does anyone besides me smell a Jew in the woodpile?

Matt Koehl, National Leader Of The ANP

Almost from the first moment Matt Koehl assumed command of the Party, there were rumblings across the country that all was not as it should be. No one could get any information about anything, and the people who had been the Commander's staunchest and most loyal supporters were being told, in effect, to drop dead. Those who would not blindly follow Koehl's dictates, regardless of their irrationality, were purged from Party ranks.

Don Zinn, a longtime supporter of the Commander, was one of the first men to feel

the sting of Koehl's biting tongue. Frank Drager, the only man I ever knew of who had the initiative and drive to get ANP publications out ON TIME, was driven out of the Party by every underhanded means at Koehl's command. George Ware, a man whom the Commander had labeled "the greatest guy who ever lived", was repaid for his many kindnesses by having the press and the building at Spotsylvania maliciously destroyed prior to Koehl's departure. After giving his word that the property would be left in good order after his men vacated the premises, all the windows were broken out, the roof was torn to shreds, signs were painted all over the building reading "Traitors Live Here", and the press had been run after having sand put in it. THAT for a man who went out on a limb for the Commander and the Party when it was needed most.

Ray York's property in California suffered the same fate as the property in Spotsylvania. Ray York has *given* over \$15,000 to the Party over the years, besides buying property for their use which they rented when no one else would rent to them, and these are the words he used to describe the aftermath of Koehl's men: "I have just lived through a horrible experience which has really shook me...after letting the Party have the building for eight years, and with their rent being so spasmodic I could no longer make the payments, I told them that I was going to have to sell the building and they would have to move. When the man in charge here related that to the insane man in Arlington (i.e. Koehl), he sent back word to abandon the building. When I went over after they had moved, no one who did not see it could believe the maniacal destruction of my property that greeted me. Fifteen windows were broken out; the gas stove, the refrigerator, a beautiful wardrobe piece, were all smashed with an axe or something. The bunk beds were busted to pieces. Debris was piled up almost to the ceiling, glass jars of food were broken against the walls, and much other damage. It cost me over \$700 and three weeks hard work to get the building in decent condition. Much more could be said. All this after I have contributed to the Party approximately \$15,000." (Bear in mind that Ray York put up ALL the money for the Commander's book *This Time The World*.)

And I, of course, came in for my share of Koehl's insane determination to purge the Party of anyone and everyone who was even suspected of having enough intelligence to see through his demonic scheme of destruction. Koehl's plan was (and is) entirely dependent on using the emotions of the young and naive; i.e. those whose blind loyalty renders them incapable of rational thought, and using the brawn of the downright stupid to accomplish his ends---and he has apparently gathered about him quite an array of both types.

Everywhere there are people whose greed exceeds their patriotism, and whose ambitions exceed their talents. Dallas is no different. The man who heads the group in Dallas was stripped of his rank and ordered out of the Stormtroop Section *by Commander Rockwell*, after a Party court had shown him to be an incompetent do-nothing, among other things. The people he attracts are mostly those who made long-term financial commitments when we bought the \$9,000 press and who, after a few months, defaulted on those commitments because their patriotism didn't quite measure up to their greed. But that type of person is too dishonest to admit to sheer greed as their reason for defaulting on a commitment (which *you* are going to have to pay if they don't), so they attack and vilify the people with whom they made their voluntary agreement. In Dallas, my wife and I were the villains---WE took the money from OUR pocket and made good on THEIR commitments; WE used our money for bails and fines for the Stormtroopers; WE contributed our home as an office and warehouse for the Order Department; WE filled the orders, answered the letters of inquiry, and kept things running on a day to day basis; and WE raised better than \$20,000 in a three year period for the Party. It was too black a record for them to stand---they lied, connived, and schemed for more than a year on how to destroy us. The Commander would have nothing to do with them. When they called him, he called us to ask how we would like him to handle the latest request or complaint. But after the Commander was assassinated, things were different---the "good guys", that is to

say the malefactors whose sole aim in life was to destroy those whose presence served to remind them of their own shortcomings, found a receptive ear. Matt Koehl needed such people and they needed him. And so a mutual admiration society was formed.

When the ANP Order Department was first moved to Dallas under my supervision, the head of the Stormtroopers, who was later to become the leader of the Dallas malefactors, was sent by me as an errand boy to obtain a post office box. Either through stupidity or deliberate intent, I don't know which, he put his own name in the place on the application form where ANP-Dallas should have been listed as holder of the box. I had the only keys; I paid the rent on the box with ANP checks; and it was I who picked up the mail every day. But because he had put his name as the holder, and because Koehl had the calculated foresight to have himself made the LEGAL heir to the ANP, the post office ruled that the box and all the mail belonged to him and therefore to Matt Koehl. My control over the ANP Order Department ended, and the order which I had created out of chaos ended with it.

It's said that "where there's a will, there's a way". All the indications are that Matt Koehl has the the will, and with the help of all the destructive forces within and without the ANP ranks, he has thus far found the way to destroy all the Commander worked to build.

BUT HE'S GOT ONE HELL OF A FIGHT ON HIS HANDS!

**For Race and Nation,
WHITE POWER!**

Max Amann

Appendix 22

Report on “Matt Koehl Wanted Poster”
July 1968

Flyer Offers Reward For Koehl's Arrest

NVS 7-25-68 p.1

ARLINGTON — A flyer is being circulated in Arlington by a man who says he will offer a \$5,000 reward for information leading to the "arrest and conviction" of Nazi leader Matthias Koehl in the murder of George Lincoln Rockwell.

On an 11 by 17 inch printed black and white flyer. Christopher A. Bailey says "facts must be examined and the truth must prevail."

BAILEY, whose signature appears over District address of Box 3735, area code 20007, says he is offering the reward for information leading to Koehl's arrest.

On the back of the flyer,

Bailey lists Koehl's vital statistics, reprints an article from a Washington newspaper, sketches the murder weapon and mentions seven "little known, yet undisputed" facts which he says were not considered in the case which ultimately found John Patler guilty.

The flyer states that:

- Two hours before Nazi leader Rockwell was killed, Koehl went to the home of Douglas Niles, an ex-convict who left the Rockwell organization.

- Rockwell was waiting for Koehl to return with the automobile so he could go do his laundry.

- Koehl stated at the trial that Rockwell's laundry was already in the vehicle when Koehl left that morning for Niles.

- Koehl did not find Niles at home, but stayed and called Niles at work while Rockwell waited for the automobile.

- Koehl returned and Rockwell took the car to the Dominion Hills Shopping Center where he was killed about 10 to 12 minutes later.

- Koehl stated in court that he did not go to view Rockwell's body even after he heard of the shooting.

- Only four persons knew that Rockwell left to do his laundry that morning and with the exception of Koehl, none were ever brought to testify at the trial.

THE FLYER contends that "space prevents the listing of other undisputed facts" and adds that everything written "can be checked and verified."

Bailey mentions in a statement on the back of the flyer that he is a 28-year-old ex-Marine fighting for "truth and justice."

"John Patler was found guilty but never proven guilty," the

flyer states. "The real killer is still at large... free and safe, laughing about how he got away with it."

The SUN received copies of the flyer last night after an unidentified man brought them to the Arlington news desk.

ROCKWELL was shot to death August 25, 1967 at the Dominion Hills Shopping Center, 6150 Wilson Boulevard.

Patler was arrested that day about a mile from the shopping center and was subsequently convicted of murder.

\$ 5,000 REWARD

WANTED

INFORMATION LEADING TO THE ARREST AND CONVICTION OF

VIRGINIA ROOM



MATT KOEHL

FOR THE

MURDER

Of George Lincoln Rockwell

\$ 5,000 REWARD

Christopher A. Bailey

MAKING THE ROUNDS — This is a photograph of the front of the 11 by 17-inch flyer which is being circulated in Arlington over the signature of Christopher A. Bailey.

Appendix 23

National Socialist White People's Party Report on
Karl Allen and his Role in Rockwell's Murder
Late 1960s – early 1970s



Karl Rogers Allen, Jr.

When the Jews attack an organization they consider dangerous through their customary weapons — smears in the Press, illegal police pressure through corrupt police officials, economic harassment, gangster terrorism, and the rest of their well-known arsenal — they often produce an undesired side-effect. Namely, their attacks on the organization attract to the organization individuals who are already enemies of the Jews. The anti-Semite will regard any Jewish attack on an organization as a stamp of approval; the more vigorously the Jews attack, the more will his sympathy be with the organization under attack.

Thus, while the conventional Jewish attack may cause an anti-Semitic organization a great deal of discomfort and inconvenience, at the same time it may result in an influx of new recruits and supporters who recognize in the object of the Jews' hatred an especially effective organization worthy of their support. And, in the same way, the morale and fighting spirit of the organization may tend to be enhanced rather than damaged by the attack.

If, then, the organization can be destroyed by a frontal attack, well and good. But if the attack fails to accomplish its purpose and instead lends a certain amount of new strength to the organization, a different approach must be used. — This different approach is usually in the form of an attack on the organization from within — either from within its own ranks, or from another organization of a seemingly similar type.

Internal subversion is, as a matter of historical record, a method at which the Jew excels, and one for which he has a real preference. In the case of a strong organization which the Jew regards as particularly dangerous, he will generally employ both approaches — direct attacks from without and subversion from within. Of the two, subversion is by far the more deadly, because Aryans seem to be particularly susceptible to it. At any contest requiring deceit, treachery, or trickery, the Jew will usually win, as a consequence of his inborn nature. Yet, if we are to survive as a race and eventually defeat our hereditary enemies, we must learn how to best beat him at this game, or, at least, how to nullify his attacks from within our ranks.

The first and one of the biggest obstacles which we face in dealing with Jewish subversion is that of credibility. Racist groups in America all too often tend to have paranoid tendencies, and they have not hesitated in the past to brand one another as "provocateurs", "Jew spies", "FBI finks", and the like, usually without justification. The result has been analogous to that in the fable about the

shepherd who cried "Wolf!" too often. But, as a matter of fact, Jew agents do operate within racist and pseudo-racist organizations — and often quite effectively. The following material is presented as a case history of one such individual, with the hope that his example may provide the reader with some insight into the whole problem and prepare him to combat it in the future.

Karl Rogers Allen, Jr., presented an application for membership in the American Nazi Party to its Commander, George Lincoln Rockwell, on August 4, 1961. His application stated that he was a Korean veteran who had received an honorable discharge from the U.S. Army as a 2nd Lieutenant, that he had then attended Harvard University and received an MBA degree, and was currently self-employed as a successful building contractor. The reason he gave for wanting to join the ANP was simple and short: "The Nazi Party seems to reflect my sentiments most closely and I would like the opportunity to put them into action."

Applicants with such apparently sterling qualifications are always rare in radical political organizations, and Commander Rockwell was overjoyed to welcome Allen into his 2-1/2 year old Party. With his degree in business administration, the natural place for Allen seemed to be in the Party's business section, and he went to work there with a will. By the application of energy and intelligence, he was soon able to make himself indispensable. He was first promoted to the post of National Secretary of the Party and then, by bearing a tale to the Commander about an infraction of rules committed by the man who was Deputy Commander at the time, was able to take that man's place, thus boosting himself into the number-two spot in the Party.

During his first year in the Party, Allen was on his best behavior. His work was a model of neatness and efficiency, and he went out of his way to make a good impression on everyone else by the use of subtle flattery and personal charm. He gradually built up a circle of devoted admirers in the Party.

The only serious flaw that his fellow Party members noticed in his facade of selfless devotion to the National Socialist cause during this time was his addiction to pornography. His off hours were spent in his room in the Party barracks, poring over trunks full of perverse and filthy magazines, books, and photographs, which he regularly purchased from filth-peddlers in Washington — often with Party funds it later turned out. Sexual fetishism, in particular, seemed to be a topic which fascinated Allen. But everyone has his little quirks and human weaknesses, and had Allen displayed none at all his Party comrades would probably have thought him too good to be true.

After he had firmly established his position in the Party, Allen cautiously began to experiment. Naturally intelligent, sophisticated, and suave, he had adopted a disarmingly frank and seemingly naive manner among the men with whom he now lived and worked. One of them described him as "just a plain country boy".

Allen carefully felt out the other men in the Party and classified them into two categories: Those who could be useful to him, and those he considered dangerous. He painstakingly cultivated the former, gradually developing his own clique, or faction, in the Party. The latter he concentrated on driving out of the Party, using whatever Machiavellian maneuvers he found necessary. He developed such skill at this that he could first stab a man in the back in order to render him harmless and then make a devoted follower of the same man. This was the case, for example, with the man he replaced as Deputy Commander. He could also cold-bloodedly betray a member of his own clique when expedient, without damaging his standing with the rest of the group.

His technique was a model of applied Pavlovian psychology. He was willing to spend whatever time and effort were necessary in the case of each Party member he wooed. Unlimited patience was his keynote. He would take a man out to lunch and to the movies, listen sympathetically to his problems, pretend to confide his own innermost secrets to him, and earnestly ask his advice in a way calculated to flatter. He cared. He was a real friend. While the Commander and the other Party officers were more often than not occupied with Party business which left them little time for back slapping and fanny patting, Allen always found time for these activities. And yet he did not push too hard. He didn't force himself on anyone. He could always wait for just the right moment to make his approach. And he had a knack for doing it in such a way that the object of his attention felt flattered that Allen was taking the time to talk to him, to share a private little joke with him. Gradually, a psychological dependence would develop. Little by little, the man would come to look forward to Allen's daily little chat with him, to a smile and a few words of praise.

And Allen could never be accused of outright subversion. He would not quite criticize the Commander or suggest that he, Allen, could do a better job of running the Party. Instead, he would worriedly comment to one or another of his clique that it was a "shame" that, despite the Commander's best efforts, the Party did not seem to be getting anywhere. Or, that it was "too bad" that a man with the Commander's courage and genius didn't seem to be able to handle money properly. Or, having convinced a man that the rest of the Party didn't fully appreciate that man's talents, he would go on to say that he was sure that this was only because the Commander was so busy that he sometimes forgot to give praise where praise was due. Always the icepick concealed in a bouquet.

Allen was thus able to spend more than a year undermining Cdr. Rockwell's authority and gradually transferring the loyalty of a sizable faction in the Party from the Commander to himself personally.

Occasionally Allen's intrigues would not come off quite as he had planned, and then he would resort to tantrums, threats to quit the Party, and every other stratagem needed to get his way. This sort of behavior placed a great deal of strain on both the Party and the Commander, especially during Allen's second year

in the Party. But the Commander still considered him too valuable a man to lose, and he bent over backward in attempting to satisfy Allen's every whim.

Then came the bombshell. The Commander tells the story in his own words, first in an open letter which he issued to the Party membership at the time:



EXHIBIT A

GEORGE LINCOLN ROCKWELL

TO ALL OFFICERS AND PARTY MEMBERS:

It can be no secret that yesterday, December 29, 1963, six of the top officers and supporters of the Party, upon less than ten minutes notice, came to me with the demand that I find a "solution" to the fact that the Party is a flop and hasn't made any real progress in five years. When I told them my solution was for them to get back to WORK and start FIGHTING the enemy instead of me and the Party, they demanded I find "something else". After much fishing around, I was able to discover that the "something else" was some kind of arrangement by which I would no longer "interfere" with the financial control of the Party, among other things, although none of them would come right out and say it.

Commander Rockwell continues the story in his Intra-Party Newsletter of January 15, 1964, an excerpt from which is photographically reproduced below:

EXHIBIT B

CONFIDENTIAL

INTRA - PARTY

NEWSLETTER

PUBLISHED AT AMERICAN NAZI PARTY HEADQUARTERS - 928 NORTH RANDOLPH STREET - ARLINGTON - VIRGINIA

me, I could NOT see why they refused to mention what was wrong, -but I later learned.

I suspected immediately that somebody was out to capture control of the Party. Like Robert Welch, I have retained direct control of the Party because I know all too well the COMMUNIST method of penetrating and taking over unions and political organizations. (They work diligently to get into one of two key spots, usually "the Council", then win one or two sincere DUPES and, with the votes of their dupes, they have it!) So I announced in advance that I would agree to nothing which would turn over our Party to any Council, etc., but I would always listen to or read any concrete suggestions. They said they would be back "in a week" with a written series of suggestions. I promised to consider these (although I would not have so much as spoken to such a "delegation", had it not contained my personal friends, Fleming and Morgan).

On January 4, 1964, Allen's delegation presented the following carefully worded petition to the Commander:

EXHIBIT C

PETITION FOR THE REDRESS OF GRIEVANCES

We believe that the Hope of the White Race and of the American Republic is locked arm-in-arm with the success or failure of the American Nazi Party.

The resurrection of the inspired ideals of Adolf Hitler from the ruins of World War II; the shaping and forging of these ideals into the American Nazi Party and the World Union of National Socialists; and the present world-wide recognition and standing of the American Nazi Party can be attributed almost solely to the foresight, personal sacrifices, unflinching will, and grubbing hard work of one single dedicated leader--George Lincoln Rockwell.

We believe that no other living human being could have accomplished the task, and that no leader acceptable as a substitute exists today--or is likely to arise--to guide the Party and our Cause to its manifest Victory.

But just as the Commander created the Party from nothing and forced life into it, and nurtured it through its vulnerable years of infancy, he also has the capacity--even if unintentionally--to strangle the Party.

And since he is human he also has the capacity to make errors in judgment.

We sincerely believe--regretfully and after reluctant but impassioned appraisal--that the Party is in a state of stagnation, and, within the past few weeks, has reached a point of outright strangulation, approaching death.

A new low in Party spirit was reached early last month, when not one single trooper stepped forward to answer the Commander's call for an out-of-town mission. This cannot be rationalized as cowardice, lack of loyalty, resentment of hard living conditions, or the proximity of Christmas; for less than ten days before the very same men had signed up eagerly for a similar mission, even quarreling when each discovered that he had not been selected.

A continuous exodus of the most talented and hard-working people has depleted the Party to a handful of blindly loyal idealists. We commend these men for their steadfastness, but since all of them are either relative new-comers or recent returnees, their tenure, too, is uncertain.

The Party has not grown appreciably in numbers since the first year of its existence, either nationally or locally. The number of men available for picketing is smaller than at any time in the Party's history.

Not one single regional headquarters has been established successfully, despite numerous attempts and considerable expense.

The Party's publications, while excellent in content and appearance, reach less than 1/5000 of 1 per cent of the American people, and seem to be butting against an artificial but impenetrable circulation barrier.

Although there has been a skeleton of organization at National Headquarters, the meat and muscle have never developed. Established procedures are regularly ignored in favor of expediency and crash projects.

Nationally there is not a semblance of organization.

The income of the Party has increased steadily through the years, yet there is no overall budgeting for basic requirements, such as rent and utilities; nor are there contingency provisions for emergencies. Fiscal procedures are regularly violated in times of increased activity, making the routine operations that are performed almost useless, and exposing the Party to legal hazards from the Internal Revenue Service and other government agencies.

Although the Party supposedly eschews mass numbers now, in favor of training a corps of officers and future leaders, there has not been one successful graduate from this "leadership school" in the five years of the Party's existence. Every Party officer who has shown any independent initiative or ability to command loyalty and respect from any large number of Party members, has departed--possibly to be allowed to return but only under the conditions of the most abject humiliation.

Despite five years in Arlington, and despite a generally improved acceptance by County officials and citizens, local financial support has dwindled to absolute zero.

One after the other of our financial supporters has become "disillusioned" and deserted the Party.

All of this has occurred in a political climate affording the best circumstances in many years for the growth of a right-wing party; and in spite of the most powerful political philosophy the world has ever known.

It has occurred, too, in spite of the leadership of the most dynamic political leader in America today.

It would be an injustice, as well as inaccurate, to place detailed blame for all these short-comings, or even for any single one of them, on one individual. External circumstances are partially responsible--but only partially. Since total authority has been maintained by one man, and insisted upon at all costs, then total responsibility must be laid at his feet, also.

Since the Party was organized as a corporation under the laws of the Commonwealth of Virginia, had Commander Rockwell agreed to the suggested change in the Party bylaws, Allen and his clique could then have removed the Commander from the Board of Directors of the Party and seized control, despite the wishes of the general membership. The courts would have been obliged to uphold Allen's action, and that would have been the end of the Party. In the same newsletter quoted above, the Commander pointed out: "As I expected, the document amounted to complete capture of the Party — although I very much doubt that Floyd and Morgan and James realized this. Had I signed any such document, one smooth agent of the enemy who could win over only three others could completely capture our Party, turn it into what the rest of the right wing is howling it is (an agent provocateur), and destroy everybody who ever supported us, including the gullible members of the 'Committee'."

When the Commander failed to take the poisoned bait, Allen acted hurt and saddened, Allen's dupes were indignant that the Commander could even suspect him of duplicity or treachery, and Allen was able to talk his clique into resigning from the Party en masse.

Allen had counted on his carefully prepared mutiny wrecking the Party, and it very nearly did so. Three top officers in Arlington remained loyal, however — among them Matt Koehl and Robert Lloyd — and despite the rumors that Allen now circulated among other members and supporters that "the Party is dead", it did not die.

At this time, Commander Rockwell prepared a memorandum in order "to put in writing certain things of which almost everybody in the Party is ignorant concerning Karl Allen". Therein he listed a number of the personnel difficulties which had been caused by Allen's intrigues, and a few of his other failings as well, of which he wrote: "These failures, in spite of my effort to minimize them publicly, were sufficiently great so that at least two top officers in the Party believe he was an enemy agent out to keep the Party from growing."

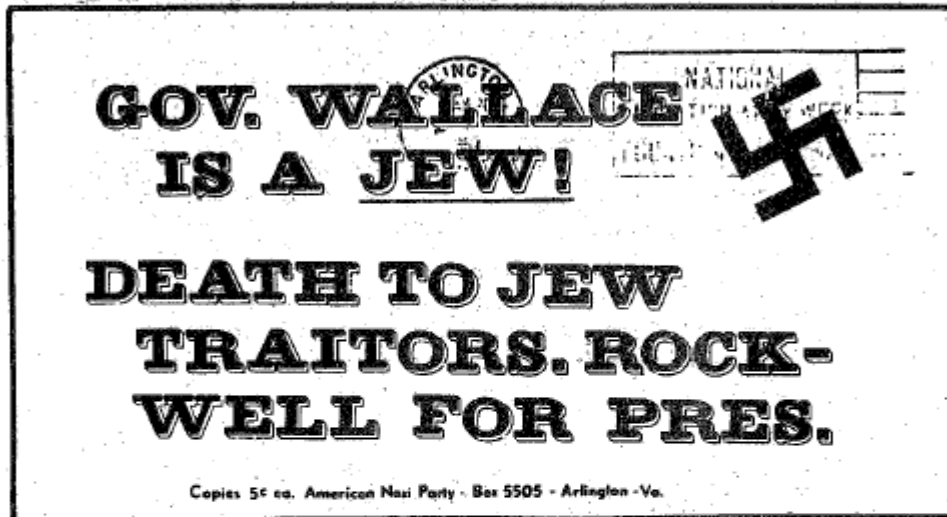
Despite his suspicions, however, Commander Rockwell could not — yet — be certain that Allen was a hireling of the Jews. Allen had been careful not to let his guard slip.

Allen hung around the outskirts of the Party awhile, and, when it became apparent that it would survive, he created a rival group of his own, naming it the "White Party of America".

One of the first things that Allen did after his ill-fated mutiny was provoke a feud between Commander Rockwell and Ed Fields of the National States Rights Party. One of Fields' supporters — a gentleman named Herman Koppers — had also given Commander Rockwell some financial aid. Allen was aware of this, and, playing on Fields' natural jealousy toward anyone encroaching on his support, he convinced Fields that Commander Rockwell had "swindled" Mr. Koppers of money that should rightfully have gone to the NSRP. Carefully remaining in the background, Allen prodded Fields into publicly denouncing the Commander, thus beginning a series of bitter charges and counter-charges that damaged both parties. Later, when the Commander and Fields finally settled their differences, Fields provided the Commander with a sworn statement detailing Allen's role in instigating the feud.

Allen maintained a liaison with the National Socialist White People's Party (as the American Nazi Party was renamed on January 1, 1967) through several persons, most notably a man named John Patler (alias John Patsalos). When Patler was thrown out of the NSWPP in the early spring of 1967 because of his Marxist tendencies, he joined forces with Allen. One of their efforts was the printing and mailing of thousands of postcards like the one below:

EXHIBIT D



The obvious intention was to discredit Commander Rockwell among Wallace supporters. Although Allen's role in this affair was suspected from the start, it was not confirmed until after Commander Rockwell's assassination, when Christopher Bailey, one of Allen's leg-men, confessed the details to Arlington police during his interrogation.

As Allen and Patler continued their collaboration, Allen was able to exert more and more influence on the unstable and hate-filled Patler. This culminated in Patler's two assassination attempts against Commander Rockwell, the second of which was successful.

As loyal National Socialists all over American fell into line behind the new National Leader, Matt Koehl, and it became evident that the murder of Commander Rockwell had not killed the Movement, Allen planned a new series of attacks on the National Socialist White People's Party. The first step in this series was the launching of a "Patler-is-innocent" campaign. He printed thousands of "newsletters", which were mailed to persons on a Party mailing list he had taken with him in 1964. His line was that:

1. Patler was innocent.
2. Facts connected with the assassination were being repressed by police.
3. Unknown persons - perhaps Zionists or ADL agents - were the real murderers.

EXHIBIT E



the White World

THE WHITE PARTY OF AMERICA • P.O. BOX 28142 • WASHINGTON, D.C. 20005

WHITE WORLD is an official publication of THE WHITE PARTY of America, P. O. Box 28142, Washington, D.C., 20005. Subscription: 12 issues for 1 dollar

**FROM HIS PRISON
CELL, JOHN PATLER WRITES
THE FOLLOWING MESSAGE:**

Dear Karl Allen, Seth Ryan
Bernie Davids, et al:

I want to thank all of you for everything you have done to defend me and help prove my innocence.

This whole thing is a horrible and unbelievable nightmare!!

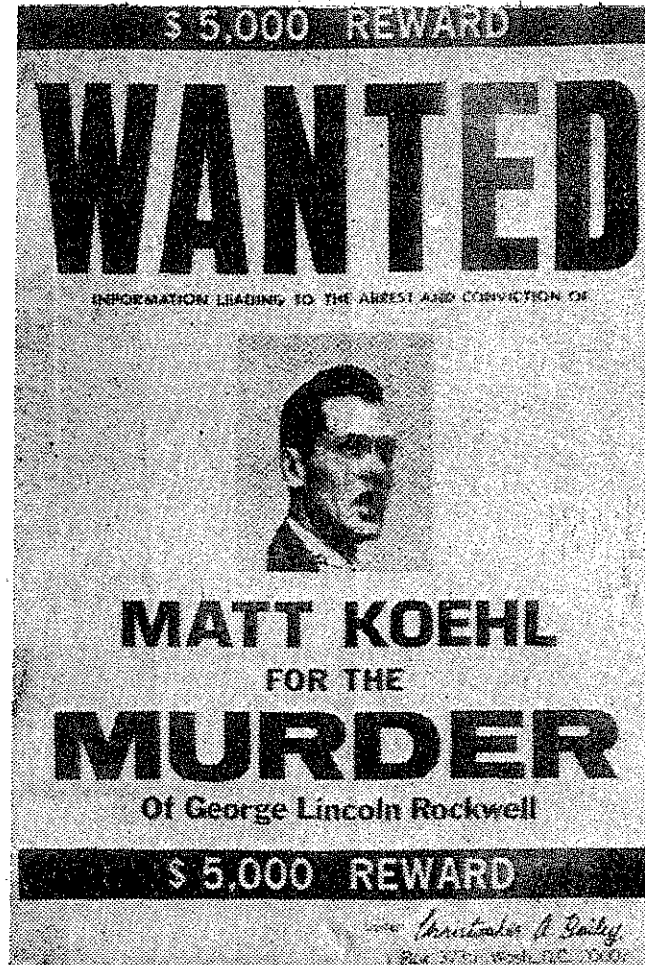
There are many things I cannot dis-
+ this before

His next step was to begin hinting that "new evidence" pointed to a conspiracy among NSWPP officers to murder Commander Rockwell. Finally, he came right out with an accusation against the National Leader, Matt Koehl. This accusation was in the form of poison-pen letters circulated to the names on his stolen mailing list (augmented by new names gleaned from two Party deserters, Mr. and Mrs. Mary A. Surrey, alias "Max Amann") followed by the "Wanted" poster below.

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EXHIBIT F



Allen took advantage of the lack of any criminal-libel statute in Virginia in distributing this material. And his modus operandi was the usual one for him: gradual, patient, and carefully planned attack. At first he restricted himself to the effort to develop doubt about Patler's guilt in the minds of those not familiar with the overwhelming and conclusive evidence against him, including eyewitnesses. During this phase he refrained from attacks on the Party, expressing mock grief over the murder, and oozing sympathy for the Movement. Only after several months did he begin suggesting that instead of "Zionists", perhaps the "real" assassin was a NSWPP leader. Finally, when the poison-pen letters and posters were circulated, they bore the names of various of Allen's flunkies, but not his own.

As deceptive and brazen as a Jew, Allen even issues warnings from time to time to racist groups about the danger of infiltration by the ADL. And, while engaged in the business of sowing dissention and suspicion among such groups, he issues solemn pleas for unity and cooperation. He covers himself with the righteous cloak of a "Wallace-for-President" campaign in Alexandria, Virginia, pretending to be an earnest Wallace supporter, while in actuality he is an enormous embarrassment to the legitimate Wallace organization, which winces every time the newspapers "expose" the "Nazis" supposedly backing Wallace.

It is difficult for Aryans to see through such brazen deceit. As Adolf Hitler warns in *Mein Kampf*, since most of them are incapable of such trickery themselves, "they will not be able to believe in the possibility of such monstrous effrontery and infamous misrepresentation in others". It seems difficult for them to grasp that a man who constantly preaches one thing is actually aiming at the opposite thing. They expect a traitor to act in a sly and suspicious manner, a Jew spy to have a crafty and evil look about him. How could a "plain country boy", a "good fellow", with such an open, sincere, and naive air about him, be a spy? Thus Allen's success in evading exposure for years.

But, if a man plays such a game long enough, he will make mistakes, and that is just what Allen has done. One of his worst slips came when he turned over to the Washington office of the ADL a copy of a certain letter which had come into his hands. The letter, written by William L. Pierce, addressed to Robert A. Surrey, and dated June 14, 1967, contains several references to a wealthy right winger, a potential NSWPP supporter. When Surrey deserted the NSWPP early in 1968 and threw his lot in with Allen's pseudo-Walleceite organization, he gave the letter to Allen, thinking that Allen might wish to approach the wealthy individual named therein for funds. Instead, Allen gave a copy of the letter to the ADL, which in turn gave a copy to the smear columnist, Drew Pearson. When an undercover patriot on Pearson's staff saw the letter, word came back eventually to the NSWPP. And, since the letter provided a direct link between Allen and the ADL, the decision was made to launch an investigation into Allen's background.

Almost immediately a stunning fact came to light. Allen had to have a "cover" job while he carried out his assignments. He needed a plausible source of income, other than ADL payoffs, to provide for his ordinary living expenses. In December, 1965, he went to work as the manager of the Prince Karl Hotel, formerly at 1901 K Street, N.W., Washington, D. C. He worked there until shortly before it was torn down to make room for a parking lot, in the summer of 1967. This information came out of a routine credit check, using the files of the Associated Credit Bureaus of America, Inc.

EXHIBIT G



Associated Credit Bureaus of America, Inc.

AN INTERNATIONAL ASSOCIATION OF CREDIT BUREAUS AND COLLECTION SERVICES SINCE 1906

ACBFA Factbill®
STANDARD CONSUMER
REPORT NO. 1

Confidential

1. REPORT ON: <u>ALLEN: KARL RODGERS</u>							
RESIDENCE	(Surname first) (Mr., Mrs. or Miss) (Given Name) (Spouse's Name)						
2. ADDRESS: <u>1019 King Street, Alexandria, Virginia</u>	(Street Number) (City) (County) (State)						
3. Number of years covered in file	<u>1962</u>						
4. A. Age (If near 21, confirm)	<u>A. about 35</u>						
5. A. Marital status	<u>A. single</u>						
B. Number of dependents	<u>B. none learned</u>						
6. A. Name of employer	<u>A. Prince Karl Hotel, 1901 K St., Wash., D.C.</u>						
B. Type of business	<u>B. Hotel</u>						
7. A. How long so employed	<u>A. 12/1965</u>						
B. Position held	<u>B. Manager</u>						
8. A. Does applicant have record of steady employment?	<u>A. yes</u>						
B. Any recent employment change? (If yes, explain below)	<u>B. none</u>						
9. Any suits, judgments or bankruptcies? (If yes, explain below)	<u>yes</u>						
10. Is applicant well regarded as to character, habits and morals?	<u>see remarks</u>						
11. Is applicant favorably regarded by employer?	<u>yes</u>						
12. Any indication of illegal practice past or present?	<u>none</u>						
13. A. Estimate monthly income from present employment	<u>A. est. \$130. per week</u>						
B. Estimate other income such as rentals, investments, etc.	<u>B. none learned</u>						
C. Estimate income of others in household (SEE BELOW)	<u>C. none learned</u>						
14. Owns home, rent or board	<u>renting since 3/1965</u>						
CREDIT RECORD: (If feasible include whether subject has satisfactory bank checking account.)							
Trade Line	How Long Selling	Date of Last Sale	Highest Credit	Terms of Sale	Amount Owning	Amount Past Due	Manner of Payment

B-0800

Store will not cooperate
(Bond Clothing Store)

F-2355

No information at this time.

B-McLachlen Bank - File reflects checking account since 2/64, low 2 fig., satis.

Subject formerly resided at 1901 K Street, N.W., Washington, D.C. and previously 1133 13th Street, N.W., Apt. 304, Washington, D.C. Your inquiry came in formerly employed, Virginia Lodge, 6007, Richmond Highway, Alexandria, Va. Personnel states they do not know of him and he is not listed in their records. We have a clipping in our files, 4/6/62 which states subject, member of the American Nazi Party was found guilty with another member of disorderly conduct. Allen and another were entering p... anti-discrimination acts near the J... a f... r...

The records of the District of Columbia Tax Assessor's office yielded the fact that Allen's employer, the owner of the Prince Karl Hotel, was a Mr. Rich M. Millman, residing at 5314 Locust Road, Bethesda, Maryland. (Millman subsequently sold the hotel to a Mr. Al Abramson, on April 20, 1967, who tore it down a few months later.) Further checking revealed that:

- a. Millman is a Jew.
- b. He is an attorney, with offices at 1001 Connecticut Ave., N. W. Washington, D. C.
- c. He is legal consultant to the Washington branch of the Anti-Defamation League of B'Nai B'Rith, with offices at 1640 Rhode Island Ave., N. W.

It is difficult to imagine a Jew lawyer accidentally hiring a well-known "Nazi" to manage his hotel for him — when even a simple credit check would have revealed Allen's former Party affiliation (See Exhibit G).

The case against Allen thus is quite solid, but, because those who have been fooled by him will be reluctant to admit that they have been deceived, the investigation is being continued. As new facts develop, they will be added to Allen's file and made available to any genuine racist or patriotic group which requests them.

The suggestion has been made by some that persons like Allen, when exposed, should be "eliminated" in a fitting manner. That is not a bad suggestion. But, in the long run, more is required. As mentioned earlier in this report, we must learn how to develop an organization which is immune to persons like Allen, for the Jews have enough money to hire new ones as fast as the old ones are "eliminated". It is hoped that a careful study of Allen's case may be a step in the right direction.

Appendix 24

Correspondence between John Patler
and Judge Charles S. Russell
September/October 1974

September 14, 1974

"RECEIVED"

SEP 17 1974

CIRCUIT COURT

Hon. Judge Charles S. Russell
Arlington County Circuit Court
Arlington County Courthouse
1400 N. Courthouse Road
Arlington, Virginia 22201

Dear Judge Russell:

It has been a very long time since I last wrote. The purpose of this letter is to let the court know what has been happening for me since I left the Arlington Jail and the other reason is to make an inquiry of the court in regard to my sentence.

After leaving the Arlington Jail, I was assigned to the Receiving Center in the State Penitentiary as a clerk for approximately six months. Then, in January of 1973, I was transferred and assigned to Unit 8 where I was approved as a participant in the Study-Release Program. I have been involved in the study-release program ever since. In June of this year, I was again transferred and assigned to ACE III (Adult Correctional Enterprises III) in Dublin, Va., where I attended New River Community College. Last month, on August 30, 1974, I graduated from New River Community College with an Associate in Science Degree (Magna Cum Laude). As a result of my having completed two years of college (in less than 18 months), I became eligible to transfer to a four year college or university. I am now a full-time student at Radford College majoring in Art Education. The people at Radford are exceptionally friendly and extremely helpful. I attend school during the day time and return to prison at night. Weekends are also spent locked up. I expect to graduate with a teaching certificate and four year college degree sometime in 1976 after which I intend to go on for my masters. Good things are happening for me and for my future.

My record since my incarceration has been excellent. And I am deeply appreciative of the opportunities made available to me to put my time to good use by the study-release program. I feel that I am now more ready than I could ever be to return to free society. I feel that further imprisonment can serve no beneficial use for me and therefore I would like to ask the court if it would be possible to entertain a motion for a reduction of my sentence. If only three years were suspended I would become eligible for parole almost immediately. I would be deeply, deeply appreciative of anything the court can do so that I can leave this prison experience behind me to go on with my life and my education.

Sincerely Yours,

John Patten

October 7, 1974

Mr. John Patler, #99373
ACE III
Box 667
Dublin, Virginia 24084

Dear Mr. Patler:

It was a pleasure to receive your letter of September 14. It only came to me today, although it was apparently received in the Courthouse on September 17. I don't know what caused the delay.

Under the statutes, the Court has no jurisdiction to suspend or otherwise modify any part of the sentence of a prisoner after he has been transported to the penitentiary, and I am unable to do anything to assist you in that regard. However, at a very early stage I wrote to the Parole Board in your behalf, recommending you for release as soon as you become eligible for consideration. Yours is the only case in which I have ever written such a letter, but all of the information which has come to me serves to confirm my belief that it was well deserved.

I sincerely congratulate you upon your educational accomplishments. You have made extremely good use of the opportunities which have been available to you and I wish you every success in the future.

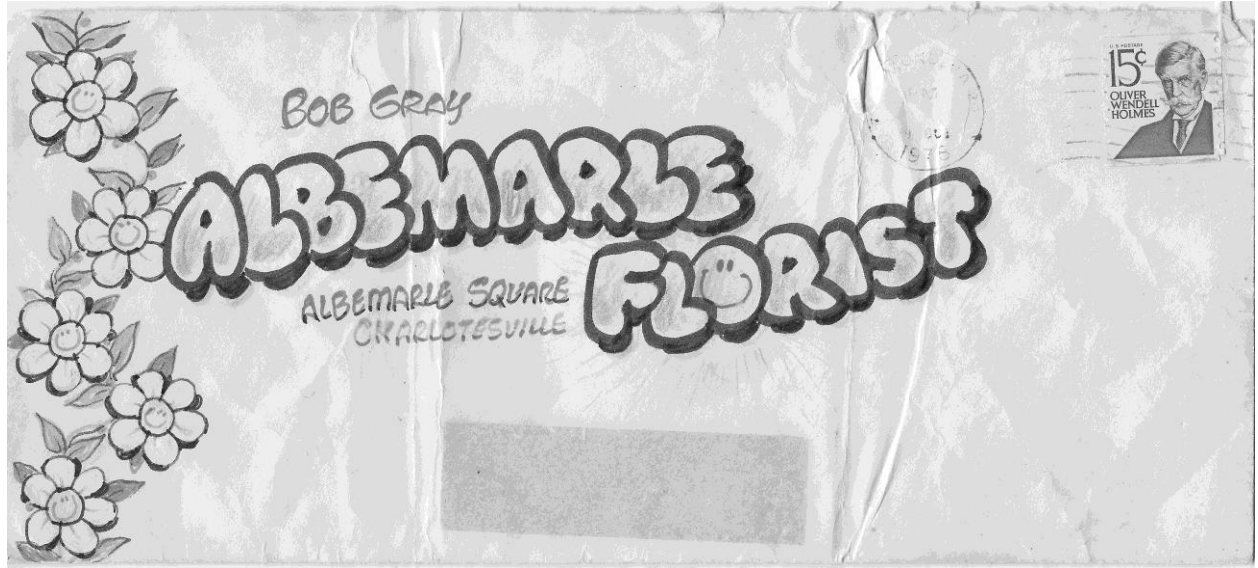
Sincerely yours,

Charles S. Russell
Judge

CSR:kw

Appendix 25

Post-Incarceration Letter from John Patler
to Bob Gray
October 9, 1978



BOB GRAY

ALBEMARLE FLORIST

ALBEMARLE SQUARE
CHARLOTTESVILLE

FRIDAY
OCT. 6

BOB -

I FINALLY GOT OUT! THIS MORNING! BARBARA CAME AND PICKED ME UP. I'M AT THE HALF-WAY HOUSE RIGHT NOW. ITS IN A "ROUGH" NEIGHBORHOOD, BUT INTERESTING. ONE OF THOSE OLD HOUSES WITH ABOUT A DOZEN ROOMS. I SHARE A ROOM, THAT FACES THE STREET, WITH "WILLIE." NEXT DOOR IS THE WOMEN'S HALF-WAY HOUSE! ACROSS THE STREET IS A HOUSE FOR PEOPLE WITH MENTAL PROBLEMS?

SATURDAY - BEEN SCOUTING THE NEIGHBORHOOD. ONE MING ABOUT NEIGHBORHOODS LIKE THIS... AS LONG AS YOU'RE NOT TOO WELL DRESSED AND DON'T LOOK LIKE YOU GOT MONEY, YOU'RE SAFE! HA, HA. ACTUALLY, ITS NOT THAT BAD.

SO HOWS IT GOING IN CIVILIS? DOESN'T SOUND LIKE YOU'RE TOO HAPPY THESE DAYS. I'D SAY THE HELL WITH THE PRIME-TIME SCENE AND ALL THOSE FOOLS. WHO NEEDS IT... OR THE AGGREVATION.

OK - MY ADDRESS HERE IS: 1500 PORTER ST.
RICHMOND 23224

I FIGURE I'LL BE HERE FOR 60 DAYS - THATS THE MINIMUM. I SPOKE WITH MY P.O. YESTERDAY. SHE SEEMS OK - I THINK. I CAN'T TRAVEL OUTSIDE RICHMOND WITHOUT PERMISSION - AND, I'VE GOT TO BE BACK HERE AT THE HOUSE AT NITE! EVERYTHING ELSE IS OK. I'M GONNA TAKE IT EASY, -AND AS IT COMES. BARBARA

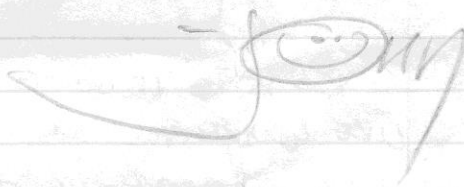
TOOK ME TO A PARTY LAST NITE. IT WAS NICE.
LOTS OF SWEET THINGS THERE! TOO BAD I HAD TO LEAVE
BEFORE MIDNITE. FRI. AND SAT, GOT TO BE BACK AT
THE HOUSE BY 12 PM! ITS OK, THOUGH! IT JUST
FEELS FUCKIN' GREAT TO BE OUT! I'M GOING TO
A MOVIE TONITE.

IF YA GOT A CHANCE, BOB, WRITE OR CALL.
OH - IF YOU SEE THE DUCK... ASK HIM TO FIND
KATHY WHITE FOR ME. I KNOW, I KNOW... WHAT
DO I WANT WITH HER? HA. HA..... HA?

ANYWAY -

LET ME KNOW

WHAT'S HAPPENING!



P.S.

IT'LL BE GOOD TO SEE
YOU AGAIN, BOB... AS A FREE MAN!

Appendix 26

Letter from James N. Mason to David Rust
December 12, 1975

Dec. 12th 75

David Rust
Post Office Box 4168
Panorama City, California 91402

Dear Mr. Rust:

I'm in receipt of your most welcome letter of the 10th.

You are quite right in that all this Machiavellian business of who's going to be "Commander of the Sieg Heil types", as William Pierce once remarked, and also who will be #2, #3, and so forth is children's games. It came over me as a slow tremor building to a shock as I learned that it was all for real and no sort of cover-up to fool the Jews.

All the splintering and schisms so far could have been a blind to cover genuine revolutionary growth. A lot of naive folks still like to think this way. I considered it for a time myself many years ago. I personally rejected the idea from the evidence at hand. Surely, the death of Tommasi must prove this to everyone else. When we can actually pull off this sort of thing, we will be operating on a par equal to the Jews.

This unfortunate affliction is at its ugliest when it appears in our own movement and there it does the most damage. But I imagine you may have this new "White Confederacy" in mind when you bring up bad faith on the part of other groups. That is probably right. But it has cost us nothing and has gained us new contacts and given us new exposure and just maybe an almost appreciable degree of "officiality" or "respectability".

We've nailed it down so that we will be in possession of those Matt Koehl papers by the first of the year without any question. I have an idea of what some of them may contain but will have to read them all in order to get an accurate idea of how presentation should be handled. I'll submit copies of the documents to you along with my own ideas and will leave it entirely up to you to make the splash.

The bit about "yellow journalism" will be where the actual fun comes in. I'm sure you know dozens of old "queer" bromides from your school days as I do. All that is needed is to fit Matt Koehl into these situations by way of cartoon or photo-montage. One that I was considering was to put Koehl's picture on a three-dollar bill. A subtle hint of mint. But I'm sure you have something more devastating in mind.

- 2 -

For awhile earlier this year I was hot on the trail of one Gary Smith who, as you may know, was the former bodyguard of Rockwell in the early 1960's. Smith dropped out during 1963 but maintained close liason with Karl Allen and John Patler up to and as late as this year. I was given Smith's prison address but when I sent him a letter, which was certified, the card came back marked "Escaped". The guy who gave me the address was also an inmate at the same pen and knew Smith was right there. He knew who I was. The letter was returned unopened. Smith has since been paroled.

I am presently establishing contact with another close collaborator of Patler's from the time when he actually began to go haywire. This man doesn't know me from Adam and to him I am merely curious toward the incident. I have a feeling that he will be happy to tell all he knows. The question is whether or not he still is in touch with Patler. I should have something definite within thirty days.

For one reason or another, Patler did really go off the deep end to an astonishing degree and literally forced Rockwell to throw him out. If you can lay hands on NS Bulletin #4, read how Matt Koehl handled the notice of Patler's dismissal and you will notice no name mentioned. The man has an odd style. But the move was of sufficient gravity to prompt Rockwell to circulate two lengthy memorandums through the membership. Patler's was a unique case. I'm sure the man is at least a pro-leftist. If you should ever get his address, I doubt whether you'll gain anything from him personally.

Some of Kalamba's men at Cleveland were making quite an issue of the "four men at the barracks" at the time Rockwell was shot. It is true that it may have been leaked from the barracks that Rockwell was on his way. Assuming there were only four men at the barracks that day, I know the names of two of them and one was Koehl. There are a half-dozen candidates for the others. My two choices would be George Parker and Robert Bruce. Of these Bruce would be more suspect.

I have the telephone log covering all incoming calls to the barracks from July 26th up to 11:00 AM the day Rockwell was shot. Throughout there are mysterious calls for Captain Patler even though he had already been out for three months. Only three calls are recorded for that day and only two names are listed. Of these, only one, that of a Don Zinn, rings any bell. His connection with the A.N.P. had been shady anyway and he had been officially black-listed by 1968.

- 3 -

The call was logged in at 9:58 AM and was recorded to have been for Rockwell. Robert Bruce took the call. Zinn was some sort of Party activist and had been in on the Chicago march. Bruce cut a pretty good figure as an ST but dropped out at about the time of the assassination. Two other things were that this was the only time Zinn's name was logged in at all and the next call was received at 10:35 AM by Donald Parsons who had obviously relieved Bruce.

If you are in the least bit familiar with either of these, as I am not, I would urge you to look into them.

Parsons I knew rather well and had a liking for. He remained on staff until 1970 or 1971 which is something of a record. Second only to Koehl's, I suppose. He left to settle down with a wife. He told me that Rockwell said to him that he was going to the shopping center for a few minutes that day and that he (Parsons) offered to accompany him but Rockwell refused. I am witness that Parsons went prematurely gray after the killing.

Parsons remained doggedly faithful to Koehl throughout all the many crises that followed and was his blind tool at the time of the coup against Robert Lloyd and William Pierce in 1970. This close link may mean something to some but I could never believe Parsons had a hand in the murder. He may have been duped by Koehl if Koehl was involved. But the fact is also that I sincerely doubt whether Koehl was involved either. He had a chance to gain but there are things which shouldn't be overlooked.

Those aspiring to power or leadership, or who are possessed by a Napoleon complex, at least believe themselves to be great leaders. As I've already said, I was one of those who was constantly pulling at Koehl to assume more of a leadership posture. He was not instantly "Commander". That didn't come until two full years later (along with the mustache.) He even put himself up for votes of confidence.

One dark rumor had it that Rockwell was killed after he let it slip that he feared he had created a monster. Rockwell's father also claimed this. But facts don't support this. What does appear evident is that those of us who were hanging around in those days did manage to create a monster which has destroyed a great many of us. But not quite all.

I've written another small book here but I'm sure you'd want to know all of this background which few have access to. The assassination story will come out one day. But until then, I wouldn't bother trying to pin it onto Koehl until something brand new is turned up.

- 4 -

I will make a stab at locating the whereabouts of Charles Lawrence and will let you know of any results.

We will be eagerly awaiting the release of the latest N.S.L.F. publications, as always. I have a fabulous new leaflet coming out later this month which I'm sure everyone will like. If you wish, you may attach your own logo to it once I've sent you some advance copies in a few weeks.

Best wishes to all of you for the Holidays.

Heil Hitler!

James M. Mason

Appendix 27

NSPA Leader Frank Collin's version
of the Rockwell Murder
1980

BLACK FRIDAY

August 25th, 1967

High noon. George Lincoln Rockwell — Commander of the American Nazi Party, founder of American National Socialism, reviver of the Idea after years of darkness and defeat — drives his own car from his headquarters on "Hatemonger Hill" to a nearby shopping center.

The atmosphere back at the headquarters is anything but friendly. John Patler, once an important figure in the Party, has meanwhile been dismissed from the A.N.P. for stirring up mutiny and dissention. Patler was gone, but the agitation and treason he left behind lingered on. Discontent and government infiltration have all but ruined the Party, which, only one year before, won so many victories among the White masses. Rockwell's officer corps is in near-revolt. His three right-hand men are plotting his destruction. Through greed and envy, they have been engaged by the enemy within (the Anti-Defamation League, a Jewish secret-terror organization), while Patler and his traitors are employed by the enemy without (the C.I.A.). Rockwell senses the conspiracy growing around him, but his hands are full just trying to keep the Party together. Besides, there is no one he can trust anymore.

Someone makes an unauthorized telephone call from the Hq., "He's on his way..." Minutes later, two men scramble to the flat, low roof over the shopping center. One of them has a loaded, 9mm Mauser pistol in his hand.

The old Chevrolet is on its way to the supermarket. What were the Commander's thoughts on that last, fateful ride? Was he despondent over the failure of his June conference to settle the discontent in the Party? Was he even then formulating some means of purging the men around him who were conspiring his downfall? Or did he think back instead to only one year before, when the masses of Chicago in Marquette Park cheered and applauded him for the first time? We will never know. Because, as he slid behind the wheel of the Chevy on that humid day in August, two pistol shots cracked from the roof top. In a superhuman burst of final energy, Rockwell leaped from the car, pulled himself up to his full six-foot-four-inch frame and pointed in the direction of his assassin. One moment later, he sank to the ground. His heart had exploded and a bullet had creased his left temple. The political heir of Adolf Hitler was dead.

In his car, police found his sun glasses and corncob pipe, personal symbols of a man who lived only for his Race.

Only moments after the assassination, John Patler was arrested on suspicion of murder. A mysterious telephone call had directed the police to his whereabouts. In the months which followed, Patler was brought to trial, found guilty of first degree murder and sentenced to twenty years in prison. Last year, Patler was freed.

Patler's trial was fraught with inconsistencies and conflicting testimony, and his guilt was never firmly established. That he was somehow involved in the conspiracy, there can be no doubt. Most likely, Patler was not the trigger man, but played the unwitting role of "fall guy" arranged skillfully by the chief conspirators to catch all the blame. But the network of traitors who engineered the conspiracy have never been positively identified, much less brought to justice. They have fallen out among themselves, formed rival organizations, and they, in turn, have been infiltrated and manipulated by government agencies.

On the 28th of August, 1967, the body of George Lincoln Rockwell was cremated after federal authorities forbade his interment in the veterans cemetery in Culpepper, Va. To this day, the whereabouts of his ashes are unknown.

But George Lincoln Rockwell was a man beyond time. The example of his life continues to lead us in our struggle for White victory, while his martyrdom shall forever inspire us to keep the faith, even unto death.

— Frank Collin

Appendix 28

NSPA Security Division Report on the NSWPP
October 1980



SECURITY DIVISION REPORT ON THE NATIONAL SOCIALIST WHITE
PEOPLE'S PARTY ---- Prepared at direction of PL, October 1980

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CONFIDENTIAL

National Socialist Defense Force
STORMTROOPS
CENTRAL COMMAND ORGANIZATION

NSPA SECURITY DIVISION OFFICIAL REPORT

SUBJECT: Current status of the National
Socialist White People's Party (NSWPP)

* * * * *

GENERAL: Investigation was undertaken in order to ascertain the practicality of National Socialist reunification. Sources used included interviews with former NSWPP officers and personnel, including tape recorded interviews with many individuals who left the party some time ago but provided valuable background information; public archives and private collections of documents, publications, and correspondence; SD covert operatives and informants inside the NSWPP.

BACKGROUND: The name National Socialist White People's Party (NSWPP) first came into being on 1 January 1967 at the behest of Commander George Lincoln Rockwell. The name of the old American Nazi Party was changed to National Socialist White People's Party in order to help inaugurate Commander Rockwell's Phase Two program, which called for the building of the serious revolutionary cadre (a similar stage to that the NSPA finds itself in at this time.)

However, due to Rockwell's death the Phase Two program never materialized. The mysterious circumstances surrounding Rockwell's assassination on 25 August 1967 have never been fully explained but do not come within the scope of this report except insofar as the assassination relates to the elevation of Mathias Koehl to the position of Party Commander of the NSWPP.

A reliable source states that on the night of the assassination, Koehl and Robert Lloyd, an officer of the party, broke into Commander Rockwell's safe and destroyed Rockwell's political testament. A recording also exists of Rockwell's last full staff conference, held in June of 1967, wherein Rockwell outlined a new political and strategic direction for the NSWPP involving downplaying the Swastika and radicalism, etc. in exchange for massive financing from a cartel of wealthy right-wing businessmen

*"But the wicked shall be cut off from the earth, and the
transgressors rooted out of it."*

Proverbs 2:22

CONFIDENTIAL

2---SD REPORT ON NSWPP

headed by Texas oil billionaire H.L. Hunt. The first installment of \$100,000 was paid some time during the summer of 1967 and was used to launch the newspaper WHITE POWER and a whole new line of literature for the NSWPP.

It is widely believed that the Anti-Defamation League of B'nai Brith got wind of Rockwell's sudden influx of funds and, panic-stricken, contrived his assassination. Over the years there have been persistent rumors that the assassin Patler (Patsalos) had a confederate in the Arlington HQ who tipped him off when his intended victim was leaving the building for the shopping center where he was killed, but to be frank, at this point in time the tracks are so muddled and the stories so confused that in our opinion it will be next to impossible to ever unravel the full story behind Rockwell's murder.

It is certain, however, that Koehl immediately initiated a number of drastic departures from Rockwell's policies which led to the first round of splintering in the party, the drying up of financial support, and near disaster for the NSWPP. It is safe to say that only the dedication and selfless labor of two officers, Dr. William L. Pierce and Robert Lloyd, saved the NSWPP from dissolution and extinction.

PURGES: It is also beyond the scope of this report to go into a full history of the NSWPP, since our purpose here is to discuss the present status of the organization and to examine the possibilities for reunification. However, one of the most notorious and well known characteristics of Koehl's rule is the constant purging, humiliation, and rejection of competent subordinates. Some of the more famous such purges are listed here:

1970 - So-called "Pierce Mutiny" where William Pierce, Robert Lloyd, et. al. were dismissed from the NSWPP.

1971 - Canadian NS leader John Beattie dismissed from NSWPP.

1972 - Captain William Kirstein hounded out of NSWPP due to his association with a woman of whom Matt Koehl disapproved.

1973 - Joe Tommasi, Los Angeles unit leader, court-martialed on trumped-up charges at Cleveland Party Congress. Casey Kalemba, Cleveland unit leader, hounded out of NSWPP due to Koehl's persistent sabotage and interference in local election effort.

1974 - St. Louis unit leader Dennis Nix purged, St. Louis headquarters seized and closed down and Party bank account cleaned out by Koehl. Forced cancellation of 1974 Party Congress.



A few minutes before noon on August 25, 1967 George Lincoln Rockwell – the notorious founder and Commander of the American Nazi Party – was gunned down by an unknown assailant outside the Econowash laundromat at the Dominion Hills Shopping Center in Arlington, Virginia. A short time later at a nearby bus stop, John C. Patler – a former close associate and member of Rockwell's organization – was arrested as the suspected killer by a passing patrolman. Despite the weak circumstantial case presented by the prosecution at his trial in late 1967, Patler was found guilty of murder and ultimately served 8 ½ years of his 20-year sentence before being paroled and disappearing into a quiet life of obscurity. To this day, opinion remains divided regarding the exact circumstances of George Lincoln Rockwell's death. Was John Patler a lone gunman fueled solely by jealous passions committing a murder as the prosecution had successfully argued at trial? Or had rogue elements of Rockwell's own organization, with or without Patler's involvement, assassinated Rockwell in furtherance of a specific political agenda as others have alleged? This three-volume compilation provides readers for the first time with direct access to over 1,800 pages of rare archival materials related to the death of George Lincoln Rockwell.

*I knew that I would not live to see the victory
which I would make possible. But I would not die
until I had made that victory certain.*

George Lincoln Rockwell

